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The Solicitors' Journal

VOL. LXXIX. **Saturday, October 26, 1935.** No. 43

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Current Topics.

Lord Carson.

By the death of Lord Carson at an advanced age, and after a long and trying illness, the law loses one who for many years was one of the most conspicuous members of the profession. In several ways his career was unique. Called to the Irish Bar, he practised there for many years with much success, beginning as a law reporter, as many others who have risen in the law have done, and rising to become Solicitor-General. Migrating to the English Bar in 1893, he received a silk gown in the following year, and almost at once leaped into the first rank of advocates, his forcefulness as a cross-examiner being his most noticeable asset. In 1900 he became Solicitor-General, thus establishing what is probably the unique record of having attained this high position in two countries; and some years later—in 1915—he attained the higher office of Attorney-General, and was given a seat in the Cabinet, both of which he resigned after a short term of office. Later, after having been for a time First Lord of the Admiralty—a post which many at the time thought in his case a somewhat odd appointment—he returned to the Bar, of which he soon became the recognised, if not the titular, head. By now he had made it a rule to accept only one brief at a time, a practice which no doubt he could well afford, but which was certainly unusual if not unique at the time, and eminently praiseworthy. In 1921 he severed his connection with the Bar by accepting the office of Lord of Appeal in Ordinary, to the duties of which he gave himself unstintedly till his resignation in 1929. Neither at the Bar nor when sitting as a member of the ultimate appellate tribunal could it be said that he was a great lawyer, that is to say, he never showed himself the possessor of any profound knowledge of legal doctrines, but this notwithstanding, he delivered several clearly expressed and well-reasoned judgments. His fame rests on his force as an advocate and his unshrinking courage in face of difficulties, and for these qualities he will long be remembered, and his passing will be sincerely mourned.

Trial of Peers.

In connection with this subject, which has again acquired a topical interest, it may be recalled that for centuries it has been the undoubted right of a peer who is indicted for treason or felony to be tried by his peers, that is, if Parliament is in session, by the House of Lords, presided over by the Lord Chancellor, to whom a commission has been issued under the Great Seal appointing him Lord High Steward, or, in the event of the Parliament being dissolved or prorogued, in the Court of the Lord High Steward. When the trial takes place in the House of Lords all the peers are judges alike of law and fact; in the Court of the Lord High Steward that great functionary is the sole judge on all questions of law, the other peers present being judges of fact. The indictment against a peer is found in the court in which, if he had not been a member of the peerage, he would have been tried, and this is removed by certiorari into the House of Lords or the Court of the Lord High Steward. As may be imagined, a very elaborate ritual is observed on such a trial, and the curious in such matters may find this set out in great detail in the Lords' Journal for 1901 containing the record of the trial of Lord Russell for bigamy. At the conclusion of that trial we read that the Lord High Steward, who in that instance was the Earl of Halsbury, declared the proceeding at an end, proclamation was made dissolving the commission of High Steward, whereupon the Gentleman Usher of the Black Rod upon his knee delivered the White Staff to the Lord High Steward, and His Grace stood up uncovered, and, holding his staff in both his hands, broke it in two, and declared the commission to be dissolved.

The Status of Bishops.

Although the question, it may be assumed, has now become quite academic, it appears to be well established that a member of the episcopal bench does not enjoy the privilege possessed by the temporal peerage of being tried by the House of Lords or the Court of the Lord High Steward. In 1692 the House resolved that "Bishops who are only Lords of Parliament are not peers, for they are not of trial by nobility," and as a corollary to this, it was stated by Blackstone that as bishops have no right to be tried by their peers in the sense indicated "therefore ought not to be judges there." At a trial of a peer by the House of Lords, however, the bishops are sometimes present but withdraw before judgment is pronounced. In the Lords' Journal, to which reference has already been made, we read that after the plea of guilty "the Lord Archbishop of York (in the absence of the Lord Archbishop of Canterbury), for himself and the rest of the bishops, delivered a protestation which they desire may be entered, and the same was read as follows: 'The Lords Spiritual of the House of Peers do desire leave of this House to be absent when judgment is given upon John Francis Stanley Russell, saving to themselves and their successors all such right in the judicature as they have by law, and of right ought to have.'" Leave was then given for the withdrawal of the bishops.

Local Government, 1835-1935.

Speaking as the guest of honour at the centenary dinner of the Association of Municipal Corporations at Guildhall last Tuesday, the Prince of Wales referred to the Municipal Corporations Act, 1835, as exemplifying the first principle of the British Constitution—democratic election. It was only when the corporations became properly elected bodies that public confidence and vitality returned to them. Public confidence was an essential element in local government as it was in Parliament. In regard to the achievements of the various public services since their very gradual concentration

into municipal hands, particular attention was drawn to what had been accomplished in the field of hygiene, progress in this direction being illustrated by the fact that the expectation of life in this country is now on an average twelve years longer than it was in 1881. Every form of disease had been attacked, and in many cases annihilated. Sanitation had been revolutionised, great advances had been made in regard to water, gas and electricity supplies, and, though transport was one of the services most criticised, it was thought that one could say with all fairness, taking into consideration the magnitude and the different forms that the problem took, that on the whole it was throughout this country a very efficient one. Looking to the future it was observed that while the record of the past was indeed a good augury, even larger tasks lay ahead, and that the new standards of life, the progress of invention, the very multitude of local government services created new problems for those engaged in local government. "How best," the Prince continued, "to organise and transact your business, how to attract talent and energy into your employment, how to co-operate with your neighbours in enterprises where combinations will make for efficiency and success, and how to exercise a wise control without undue interference with the free play of private enterprise and initiative—these and scores of other matters deserve, and I make no doubt are receiving, and will receive, the best thought you all can give them."

Housing: Duty of Local Authorities.

With regard to a matter which has from time to time received a good deal of attention in these columns, The Prince of Wales observed that there was one municipal service, one local government service, of which he would like to say an extra word—one that he considered the most important of all that the local authorities had to face—and that was housing. A meeting of the association held at Guildhall in 1933 and addressed by The Prince of Wales, when representatives from all parts of the country were gathered together, and were loud in denunciation of the then existing slum situation was described as having served its purpose in rousing public opinion and stirring into action both central government and local authorities. On that occasion the Prince referred to the pitifully small proportion of actual slum clearance in the general building statistics, both of the pre-war and post-war years. On the present occasion he continued: "The problem in 1933 was indeed acute, for it was found that no less than 300,000 slum houses had to be replaced. I have recently studied many interesting statistics, which show what has already been achieved in this direction during the last two years. I do not wish to worry you with figures, with which so many of you are familiar, but I will merely assure you that they represent an encouraging start to remove what is nothing short of a slur upon our civilisation. "We must," it was said "at all costs beware of too easy satisfaction and consequent relaxation of our efforts towards the great goal—the total abolition of slums, which can and must be achieved." Overcrowding was described as the worst side of the housing problem from every point of view, physical, mental and moral, while the Housing Act, 1935, was referred to as enabling local authorities to deal with overcrowding in a way never before possible. Slum clearance was a trust laid upon local authorities by the public. "May your great traditions," said The Prince of Wales, "enable you adequately to discharge this trust, and may this fair beginning be carried to a triumphant conclusion in the shortest possible time."

Speed Limits: Power of Minister.

The practice, which has come to be known as that of delegated legislation, has not infrequently been exhibited as one of the glaring examples of a growing bureaucracy, and has from time to time formed the subject-matter of unfavourable comment. In the course of many of these strictures—and we are far from saying that they are in all points unjustified—the executive official, appointed to bring into force from time to time the various portions of a statute or, perhaps, to determine the scope of its operation, is delineated, or at least made to appear, as the villain of the piece, occupied in discreditable machinations to restrict in an unconstitutional manner the liberty of the subject. Another side of the picture is suggested by a statement recently issued on behalf of one section of road users—a section, be it said, commanding, and rightly commanding, much sympathy—where it is urged that the Minister of Transport should make a rather more extensive use of his powers relating to the delimitation of "built-up" areas for speed limit purposes than would commend itself to another section of the public. Reference is made to the Minister's statement in a recent broadcast to the effect that during the twenty-eight weeks in which the 30 miles an hour speed limit has been in operation the number of persons killed in towns where, generally speaking, it has been in force has fallen by 22 per cent., or more than twice as much as the percentage in country areas where it has not been generally in force. In spite of this admission the Minister, it is suggested, is himself in danger of whittling away the value of the speed limit by the de-restriction of roads in built-up areas which are now the subject of public inquiry in various parts of the country. "The Minister," it is said, "is continually appealing to the public to do their share in avoiding accidents by being considerate and careful. The public therefore have a right to expect that the Minister himself shall do his share by not depriving them of the protection of the speed limit, which it was the intention of Parliament that they should have." Viewed in this light, the lot of the lawyer would appear to be more enviable than that of a minister; for in exercising his interpretative functions in so far as they relate to statutes the former is at least confronted with the law as enunciated, while the latter in his role of subordinate legislator must, it seems, be guided by the elusive entity, the intention of Parliament, often without any general line of policy, to say nothing of written words, to guide him.

Traffic Lights: The Word "Go."

Readers may remember the decision of the Bromley Police Court, mentioned in our issue of 20th July, at p. 531, to the effect that no offence had been committed by one who drove past a traffic signal showing a red light but not displaying the word "Stop" on the lens. Reference was made in our former "Current Topic" to the Traffic Signs (Size, Colour and Type) Provisional Regulations, 1933, which provide that the word "Stop" shall appear on the red lens and that "no other lettering shall be used upon the lenses or in connection with a light signal": *ibid.*, para. 27 (*g*). The question whether the word "Go" on the green lens would render the traffic signal in question illegal and enable it to be passed with impunity was raised in a recent case of the South-Western Police Court. It was urged in defence of a tram driver who had passed such traffic lights that the letters "Stop" could be on the red light, but that there must not be any other letters on the yellow or green light. A note on the case in *The Times* does not indicate how the argument was received, but records the fact that the summons was dismissed on payment of 20s. costs. While on the subject of traffic lights, it is interesting to note, in reference to what may, perhaps, be described as the best known of all the principles of law, the quashing of a recent conviction of one fined £2 for alleged failure to conform with traffic signals. When the case came before the magistrates, the chairman remarked: "We think there is an element of doubt in this case, but we are not going to give the defendant that benefit." On appeal to sessions the deputy-chairman said: "The justices consider there is a doubt in this case, and the appellant will be given the benefit of it." The conviction was quashed and the appellant was allowed £10 10s. costs.

Halt: Major Road Ahead.

We have already alluded in this column to the new "Halt—Major Road Ahead" sign and to the considerations that will dictate its presence in the place of the existing "Slow—Major Road" sign which will in many cases continue to be the warning given to a driver approaching an important from a less important thoroughfare. A further point may be usefully referred to at this stage. Monday's *Daily Telegraph* contained the interesting statement that the Ministry of Transport has recently advised the Home Office that in no circumstances whatever should vehicles fail to pull up dead at the crossing after passing the Halt sign. In consequence, a driver on a secondary road will be required to halt before proceeding at the junction with the major road even when a policeman or road patrol is holding up the main road traffic for safe crossing. In this connection it seems that there may be some danger of a false inference being drawn from the Slow sign that in such cases it is *per se* unnecessary to stop. Something of the same nature seems to have occurred from the imposition of the 30 miles an hour limit which, owing to the incredible imbecility of some motorists has, it appears, been taken in some instances as the equivalent of an invitation to drive at that speed. "Many drivers," it was stated in a recent letter to *The Times*, "limited to 30 m.p.h. where higher speeds would be safe try to do 30 where lower speeds would be dangerous. Other drivers who never drove at anything like 30 m.p.h. in built-up areas for fear of police action now do it, to the danger of all, with impunity. Virtually the charge of dangerous driving at speeds of less than 30 m.p.h. in built-up areas is done away with, and yet the vast majority of cases seen are in that category." On a parity of reasoning a motorist of this type—who, we are convinced, is to be numbered among a small, but none the less dangerous, minority of road users—may with the introduction of the new sign take the Slow sign to be the equivalent of an invitation to proceed at a relatively moderate speed in all circumstances, or, alternatively, in order to obviate this tendency, the Halt sign may be placed at junctions where the Slow sign would otherwise be sufficient.

Contribution between Tort-feasors.

The Law Reform (Married Women and Tort-feasors) Act, 1935, provides, by s. 7, that Pt. II thereof shall come into operation on such date as the Lord Chancellor may by order appoint. The Lord Chancellor announced recently that the said Part is to come into operation on 1st November, and an order to that effect has been duly made. This Part of the Act, which relates to proceedings against and contribution between tort-feasors, provides, *inter alia*, that any tort-feasor liable in respect of damage suffered by any person as a result of a tort (whether a crime or not) may recover contribution from any other tort-feasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tort-feasor or otherwise, with, however, this saving: that no person shall be entitled to recover under the section in question (s. 6) from any person entitled to be indemnified by him in respect of which the contribution is sought. The foregoing section does not, it should be stated, affect any criminal proceedings against any person in respect of any wrongful act, or render enforceable any agreement for indemnity which would not have been enforceable if the section had not been passed. Our readers may remember that, as noted in this column last June, during its passage through Parliament the title of the Bill which has become the Act above mentioned was altered from that of Law Reform (Miscellaneous Provisions) Bill to Law Reform (Married Women and Tort-feasors) Bill. Whether married women will prefer to be associated with tort-feasors, rather than with their former legal companions, infants and lunatics, must be left to our readers or, perhaps, to them to judge. But from the foregoing it would appear that the Legislature has done little to improve their status.

New County Court Funds Rules.

The attention of readers is drawn to the County Court Funds Rules, 1935 (S.R. & O. 1935, No. 968/L.10), which effect a number of detailed amendments of the County Court Funds Rules, 1934, with which they are to be read and construed. The new rules which came into operation on 30th September last, are set out on p. 798 of the present issue.

Recent Decisions.

In *Matthews* v. *Amalgamated Anthracite Collieries Ltd.* (p. 795 of this issue), the House of Lords dismissed an appeal from and affirmed an order of the Court of Appeal remitting the case to the county court judge to fix the payment due to a collier, in respect of coal gotten, on a *quantum meruit* basis. The miner claimed that an agreement fixing his remuneration for getting both large and small coal on the basis of large coal only was invalid as contrary to the Coal Mines Regulation Act, 1887, s. 12 of which provides that miners shall be paid "according to the actual weight gotten by them." The county court judge held that the whole of the coal won should be paid for at the through coal price, but went on to indicate that if, contrary to his view, the case had to be determined on a *quantum meruit* and not on a contract basis, he would have awarded the same amount.

In two recent rating appeals concerning the *Valuation Roll of the London and North Eastern Rly. Co.—Re* (the said roll and) *Re An Appeal by the Corporations of Newcastle-upon-Tyne and Gateshead; and Re An Appeal by the Cleethorpes Urban District Council* (both reported in *The Times*, 16th October) —MacKinnon, J., negatived arguments based on a reading of the definition of "railway hereditament" in s. 1, sub-s. (3) of the Railways (Valuation for Rating) Act, 1930, as if the words were "any hereditament occupied by a railway company for the purpose of its railway business." The words are "any hereditament occupied for the purposes of the undertaking of a railway company." The Railway and Canal Commission Court held in the first case the lower deck of a bridge constructed under statutory requirement and used for pedestrians and vehicular traffic on payment of tolls was, for rating purposes, equally with the upper deck used for railway traffic, part of a railway hereditament, and in the second case that certain gardens and a pier which the railway was authorised by statute to occupy formed part of a railway hereditament for rating purposes.

In *Interoven Stove Co. Ltd.* v. *British Broadcasting Corporation* (*The Times*, 16th and 17th October), Talbot, J., held that there was no case to go to the jury in an action arising out of a statement made in the course of a broadcast on housekeeping to the effect that a certain type of grate had proved unsatisfactory and had been removed from a living room in consequence. The learned judge referred to a statement of Bowen, L.J., in *Ratcliffe* v. *Evans* [1892] 2 Q.B. 524, 527, as indicative of the foundation of an action for slander of goods, which was entirely distinct from actions for libel and slander, and held that the case was disposed of by the fact that there had been neither disparagement of the plaintiffs' goods, nor falsity, nor malice—each essential to the success of such a claim—while on the question of actual damage his lordship thought there was some evidence of actual loss and intimated that he would not have withdrawn the case from the jury if that question had stood alone.

The Court of Appeal ordered a new trial in *Nicholson* v. *Inverforth and Others* (*The Times*, 18th October) in which the plaintiff claimed the sum of £10,000 from the executors and trustees of the estate of the late Sir Thomas Lipton alleged to be due for services rendered to the deceased. The ground for the decision was that since the trial, when the plaintiff's claim was negatived, fresh material had been discovered which had an important bearing on the issues in the case. On this point reference as made to statements of Lord Hanworth, M.R., and Scrutton, L.J., in *Rex* v. *Copestake* [1927] 1 K.B. 468, at pp. 474 and 479.

Public Policy and some Modern Institutions.

A REPLY BY THE AUTHOR OF THE ORIGINAL ARTICLE.

A SHORT article in THE SOLICITORS' JOURNAL for 12th October, at p. 749, described the original article on this subject, which appeared in THE SOLICITORS' JOURNAL for 23rd March (79 SOL. J. 204), as "both interesting and curious." A dislike of the "*tu quoque*" argument prevents us from making the reply that much of the criticism contained in this second article (which for the sake of convenience may be called "the short article") is both curious and interesting.

The short article insinuates that a wrong impression was given in the original article of *Sutherland* v. *Stopes* [1925] A.C. 47. Even if that was so—and it is not for one moment admitted—a study of the report in 1925 A.C. would soon put matters right. There seems to be no real trouble here. One is inclined to repeat the words of a famous detective in fiction who observed, when one of his minor problems solved itself, "May all our difficulties vanish as easily!"

There is more substance in the criticism in regard to the dicta in *Sutherland* v. *Stopes*. But so far from retracting or even modifying our warnings, we would emphasise them.

Lord Justice Scrutton pointed out that the standard of depravity might not be the same in 1923 as in 1877.

It is fatally easy to argue from that dictum that what was considered wrong in 1877 must necessarily be right to-day. If anyone thinks that such a fallacy is too obvious to deceive even the crudest thinker, we would commend him to a study of our modern novels—especially some by female writers—our plays and even our sermons.

No doubt it is a tempting fallacy, but it would be disastrous for the practising lawyer to act upon it, or anything like it.

For the present, however, one must rely largely on dicta, when the legality of a bequest for the furtherance of birth control is in question. The recent case in the Chancery Division, mentioned in the original article, revealed the paucity of legal dicta on the subject of birth control. Recourse must be had to *Sutherland* v. *Stopes*. The more closely that case is studied, the greater hesitation the practising lawyer feels, when dealing with the subject of birth control. Much, as we pointed out, depends on the circumstances of each particular case. But, in dealing with that subject, nothing should be taken for granted.

Such cases as *Sutherland* v. *Stopes* and, in a different sphere, *In re Grove Grady* [1929] 1 Ch. 557, act as salutary checks. They show the dangers of assuming that doctrines, which are widely held at the present time, will necessarily be incorporated into our law by the courts.

The reference at the end of the short article to the speech of Lord Wrenbury is certainly interesting. It is the only speech, of those made in *Sutherland* v. *Stopes*, in which one can detect any real sympathy with the doctrines of the plaintiff. Lord Carson, whose speech immediately followed that of Lord Wrenbury, specifically stated (at p. 100 of the report) that it must not be assumed that his views coincided with those of Lord Wrenbury, so far as those doctrines were concerned.

The eminent lawyers who made speeches in the House of Lords in *Sutherland* v. *Stopes* were most careful not to let their personal views on the subject of birth control obtrude into their speeches. We can only hope that we have been equally careful. But one can make certain conjectures. It is hard, for instance, to imagine Viscount Finlay upholding the legality of a bequest for the furtherance of birth control, had such a question ever come before him.

It might be mentioned that many great religious bodies have condemned the practice of birth control. Few, if any, have gone further than "praise it with faint damns." The Lambeth Conference, where the problem was discussed, showed a marked division of opinion on the subject, and the resolutions eventually adopted were extremely guarded in their character. It is true that many eminent clergymen, such as the late Dean of St. Paul's, have given a reasoned approval to the practice. But the fact remains that ecclesiastical opinion is, on the whole, decidedly opposed to the doctrines of birth control. Such a factor would certainly need to be considered in any case where the legality of a bequest for the furtherance of birth control came before the courts.

We feel that there is divergence among lawyers as well as among ecclesiastics on the subject. From the last two paragraphs of the short article, we should surmise that the writer is not opposed to the doctrines in question. But there must be many readers of THE SOLICITORS' JOURNAL who take different views. There must be a number who would agree with the point of view apparently taken by Viscount Finlay rather than that which appears to have been taken by Lord Wrenbury. It would be interesting to learn their views.

Costs.

BANKRUPTCY.

WHEN judgment has been obtained for a client in respect of a debt, and difficulty is being experienced in enforcing the judgment, the solicitor not infrequently is asked how much it will cost to obtain a receiving order against the delinquent debtor.

One is called upon on many occasions to provide an estimate of the costs that are likely to be incurred in a particular cause or matter, and in the majority of cases it is no light undertaking to produce figures that will serve as a reliable guide. At the best, such estimates can only be passed on to the client subject to many reservations. In the matter of bankruptcy costs, or rather, the costs of the petitioning creditors' solicitor for obtaining a receiving order, where the act of bankruptcy is the non-compliance with a notice, a much more reliable figure can be given, unless it is known that there is going to be considerable opposition to the order. The costs in such a case amount to about £35, or where the assets of the estate are under £300, about £30. These costs are in the ordinary way recoverable out of the debtor's estate, and are, in fact, a first charge thereon, subject to the Official Receiver's fees and expenses and the remuneration of the special manager, where one has been appointed.

Bankruptcy costs, or rather, the costs of proceedings in bankruptcy, are regulated by the scale set out in Pt. II of the Bankruptcy Rules. It will be recalled that bankruptcy proceedings may be taken in the High Court, or, where the debtor is within the area of a county court, having bankruptcy jurisdiction, then in that court. In either case, the scale of costs is the same, and although the taxing master or the registrar has a certain discretion in respect of some items of costs, it will be found that there is, normally, very little departure from the scale laid down in Pt. II of the Rules. It may be emphasised here that this scale applies only to proceedings in bankruptcy, and in respect of other work, the solicitor acting in bankruptcy matters may be allowed to charge on different bases, as will be explained later.

Two scales of costs are provided by r. 103 (2) of the Bankruptcy Rules, the higher scale and the lower scale, the latter being applicable in cases where the assets of the debtor are under £300. Although the sub-section of the rule states that the lower scale shall apply only to those cases where the costs are to be paid out of the estate, it will not apply to conveyancing costs which may be so payable, and which are taxable under General Regulation (2) of Pt. II of the Rules (see *In re Parfitt* (1889), 23 Q.B.D. 40, a case decided under the

earlier Acts and Rules of 1886). The lower scale will, however, apply to trustees' costs of proceedings in the Bankruptcy Court which are payable out of the assets, but not to trustees' costs which, although payable out of the assets of the estate, are not strictly costs in the bankruptcy proceedings (see *Re Weighill* [1909] 1 K.B. 92.

For example, the trustee's costs of endeavouring to collect the assets by action would be recoverable on the ordinary scale applicable to such actions whatever the amount of the assets.

The higher scale of costs is the scale set out in Pt. II of the Rules, whilst the lower scale is three-fifths of the higher scale. It will be evident, therefore, that whether the assets are under or over £300, the bill of costs should be taxed in the ordinary way on the higher scale, and, if the assets prove to be under £300, then the profit charges will be reduced by two-fifths.

Although the scale set out in Pt. II of the Rules is fairly comprehensive, there may be items which are not covered by the allowances set out therein, and in such a case the scale of costs set out in App. N of the Supreme Court Rules shall apply. In this connection, it will be remembered that the taxing master has a wide discretion to allow such increased costs as in his opinion is just and reasonable (see Ord. 65, r. 27 (29) and General Regulation (15) of the Bankruptcy Rules). It must not be overlooked, of course, that if any item is charged according to App. N, but forms part of the costs of any of the proceedings in the Bankruptcy Court, then, if the costs are payable out of the estate and the assets of the latter are under £300, the charge, although in accordance with App. N, will, presumably, have to be reduced by two-fifths in accordance with r. 103 (2).

The scale set out in Pt. II does not apply, moreover, to conveyancing business or to any other business not being business transacted in any court or chambers and not being otherwise contentious business, to which the General Order of 1882 applies, and which arises in the course of the bankruptcy proceedings. Thus, in the case of completed sales, purchases or mortgages, the percentage remuneration prescribed in Pt. I of Sched. I will apply, and although the solicitor has the right, it will be remembered, under r. 6, to elect before undertaking the business, to be remunerated according to Sched. II, instead of under Sched. I, the trustee in bankruptcy should decline to accept his election without the consent of the court.

We have already pointed out that, although the remuneration to which the conveyancing scales apply may be payable out of the assets of the estate, yet r. 103 (2) does not apply, for the conveyancing work is not a proceeding in the Bankruptcy Court. Consequently, in those cases where the assets are under £300, there will be no reduction of the charges made out under the Order of 1882, by two-fifths as in the case of charges made out according to the scale set out in Pt. II of the Rules. This point is important, because Sched. II will apply to many matters arising in the course of the bankruptcy proceedings, the costs in respect of which are payable out of the estate, and caution should be exercised to see that those items to which the Order of 1882 applies, are clearly marked.

In any case, the remuneration provided by this Order is infinitely more remunerative than that provided by Pt. II of the Bankruptcy Rules.

We must leave the examination of the scales applicable under Pt. II for consideration in a later article.

The ninth annual "Good Counsel" Ball in aid of the Society of Our Lady of Good Counsel (to give free legal assistance to the poor, irrespective of race and creed) will be held at the Dorchester Hotel on Friday, 15th November, 1935. The Hon. Mr. Justice and Lady Langton will receive the guests. All communications should be addressed to the Hon. Secretary, Mr. S. Seuffert, at 53, Vicarage-court, Vicarage-gate, W.8.

Company Law and Practice.

Vacation of Office by Directors.

Last week we were here considering some of the questions which arise in connection with the remuneration of directors; this week it may be of some interest to turn our attention to the methods in which the office of a director may be vacated. First the statutory provisions which fall under this head may be considered.

Section 217 of the Companies Act, 1929, confers upon the court a power, on the application of the official receiver, to make an order disqualifying a person who has acted fraudulently in relation to a company in liquidation from being a director of or in any way, whether directly or indirectly, being concerned in or taking part in the management of a company for a period not exceeding five years. Such an order can only be made where, following upon a compulsory liquidation, the official receiver has made a further report under the Act (see s. 182 (2)); and the maximum period of disqualification runs from the date of the official receiver's further report.

There is another section under which the same disqualifying order can be made; this is s. 275, but the jurisdiction to make the order arises in circumstances different from those which operate in the case of s. 217. The jurisdiction arises in every case where either a declaration of personal responsibility of a director has been made under s. 275 (1), or a director has been convicted of knowingly carrying on the business of a company with intent to defraud under s. 275 (3): the declaration under s. 275 (1) involves the proof of fraud before it can be made; and therefore a disqualification under s. 275 (4) involves the proof of fraud.

Table A (see Clause 72 (*d*)) contains a reminder of these two sections by saying that the office of director shall be vacated if the director becomes prohibited from being a director by reason of any order made under ss. 217 or 275 of the Act, and all, or almost all, the common forms of article contain a similar clause—but it should be borne in mind that the order will operate whether or not the articles refer to orders made under the section, and the only effect of the article is as a reminder.

Descending from matters involving moral obloquy to what may be merely ill-fortune, a fact recognised by the legislature, we come to section 142 (1), which provides that if any person being an undischarged bankrupt acts as director of or directly or indirectly takes part in or is concerned in the management of a company except with the leave of the court by which he was adjudged bankrupt, he shall be liable on conviction or indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £500, or to both such imprisonment and fine. There is also a proviso containing what may be called a transitional provision with which we need not bother here. The maximum penalties for contravention of this provision of the Act are the same as those which can be imposed for contravention of an order made either under s. 217 or s. 275.

It is usual in articles of association to provide for vacation of office by a director who becomes bankrupt (see Clause 72 (*c*) of Table A); does this add anything to the law as declared by s. 142? It would appear that it does; for while ss. 217 and 275 contemplate orders preventing a person from being a director of a company, s. 142 only makes it an offence to act as a director. If language is to be given its proper meaning, s. 142 does not, as do orders under the other sections, operate to remove a director from office, but only precludes him acting; this might be a very different thing, and might be of much practical importance.

Take, for instance, a case where the bankrupt was, in happier times, appointed a director for a period of, say, four years by the articles; if the articles do not provide for vacation of office on bankruptcy or on absence from board meetings for a

particular period (as to which see further below) he might, on obtaining his discharge, start to act as a director again, whereas, if he had actually lost his office, he might have been unable to procure re-election thereto.

It is by no means uncommon for disqualifying articles to couple other matters of an analogous nature with bankruptcy, such as the director becoming insolvent or compounding with his creditors, but when drafting articles of this nature the cardinal rule to bear in mind (as also in drafting all other articles) is that, so far as possible, only words having a reasonably clear or well-understood meaning should be used. The meaning of "insolvent" in such a connection has been considered in *London & Counties Assets Co.* v. *Brighton Grand Concert Hall* [1915] 2 K. B. 493, a case which should be read by anyone making an extensive study of this topic.

There is one other statutory means of disqualification which cannot be entirely ignored on any general consideration of the subject, and that is disqualification owing to not having or obtaining the necessary share qualification, if any. The appropriate section is s. 141, and I do not propose to dwell on it here—it is familiar to many people, and has received treatment in these columns before. Note, however, that the Act does not anywhere require any share qualification—s. 141 only deals with cases where the company's articles require a share qualification; and the two months' time limit specified in the section is not infrequently shortened by the articles. The Stock Exchange makes it a condition precedent to an official quotation that the articles of association should require a share qualification for directors. Table A imposes a share qualification of one share, an amount so small in the case of most present-day companies as to be practically negligible.

Some other common methods of disqualification found in many articles of association can be passed over quite shortly; thus, it is hardly surprising to find that Table A and almost every form of articles say that a director who is found lunatic or becomes of unsound mind is to vacate office as a director. Curiously enough, though shareholders in many companies must be given furiously to think by reading such an article, instances of disqualification by this means have not figured conspicuously in the law reports; it may be that the law of defamation acts as a deterrent on persons who might otherwise seek to take advantage of such an article and thereby benefit the concern in which they hold shares. Similarly, resignation of office by a director calls for practically no comment, and indeed, an article relating to it is hardly necessary, and may only complicate matters, as is shown by the case of *Latchford Premier Cinema Limited* v. *Ermion* [1931] 2 Ch. 409, where it was held that, though the article provided for resignation in writing, there was no reason why a resignation should not be made verbally to the company in general meeting. Once given, a resignation cannot be withdrawn.

Table A contains also two methods of disqualification which are commonly either left out entirely, or varied, when articles are settled; they are these:—

if the director,

(*b*) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager.

(*g*) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company.

This latter method of disqualification, is, however, modified so as to exclude the case of a director being a member of a corporation dealing with the company, if the director makes an appropriate declaration of interest, as required by s. 149 of the Companies Act, 1929.

It is not uninteresting to observe that the effort of the legislature contained in Table A to push to its logical conclusion the view entertained by equity with regard to the conflict between duty and interest which may rage in the breast of a trustee, meets with scant respect from those concerned with the promotion of companies; who very commonly cut out entirely the provisions of Table A (*b*) and (*g*) set out above. The reason is, no doubt, that the great majority of companies are promoted primarily to further the interests of those who promote them, who will probably be directors.

Other causes of disqualification are found in articles, as for instance, conviction of an indictable offence—and in one case even, we find offences under the Road Traffic Act, 1930, excluded. Whether a person who commits an indictable offence is necessarily a person who ought not to be a director of a company seems perhaps open to question; indeed, one can think of indictable offences the commission of which could hardly affect the usefulness of the criminal as a director.

As has recently been stated in these columns, a director is under no obligation to attend meetings of the board; hence, it is now quite a common ground for disqualification to say that if a director absents himself from meetings of the board for some consecutive period he shall cease to be a director; frequently qualified by some such words as "without leave of absence from the board." "If he absents himself" means "if he voluntarily absents himself," and if he is really prevented by ill-health from attending, he is not within the article. But he must be genuinely so prevented, and if he goes abroad merely because he thinks his health will thereby benefit, he is within the article. In this connection the reader should read and contrast *Mack's Claim* [1900] W.N. 114, and *McConnell's Claim* [1901] 1 Ch. 728. Time in such a case does not begin to run until a meeting is actually held from which the director absents himself: *McConnell's Claim, supra.*

In these cases the disqualification is automatic, and occurs forthwith upon the happening of the specified event; no resolution of the directors is required to make it effective, and no resolution of the directors can waive it: *Re Bodega Co.* [1904] 1 Ch. 276.

A Conveyancer's Diary.

Agreements Collateral to Contracts for Sale.

It is a general rule familiar to us all that once a purchaser of land has completed his contract by taking a conveyance he has no right of action afterwards for any misdescription or breach of warranty contained in the contract unless he can prove fraud, fraudulent misrepresentation, or deceit. The conveyance is conclusive and puts an end to all questions which might have been raised under the contract.

In *Leggott* v. *Barrett* (1880), 15 Ch. D. 306, James, L.J., expressed the law to be as follows: "I think it is very important, according to my view of the law of contracts, both at common law and in equity, that if parties have made an executory contract which is to be carried out by a deed afterwards executed, the real completed contract between the parties is to be found in the deed, and you have no right whatever to look at the contract, although it is recited in the deed, except for the purpose of construing the deed itself."

That case, it is true, was not one where the contract was for the sale of land. I refer to it because the general principle applicable to all contracts is laid down.

The principle was applied in *Joliffe* v. *Baker* (1883), 11 Q.B.D. 255, to a case of the sale of land. There a vendor of real property, during the negotiations for the sale, made a representation to the purchaser, *bonâ fide* and believing it to be true, that the pieces of land sold contained three acres, whereas in truth they contained a less quantity. After conveyance the purchaser measured the land and discovered what the true acreage was. In an action claiming compensation for misrepresentation, it was held that the purchaser

could not recover after completion in the absence of fraud on the part of the vendor.

A later case which exemplifies the rule is *Greswolde-Williams* v. *Barneby* (1901), 83 L.T. 708. In that case the facts were that there was a contract for sale of a mansion house and land in which the vendor contracted and warranted that the house was in first-class order as to drainage and otherwise. After the conveyance the purchaser found out that the drainage was in a very bad state, and in every respect contrary to the statements contained in the contract. The purchaser having brought an action for damages, it was held that he could not recover. In the course of his judgment, Wills, J., said: "It seems to me that all matters connected with the description and with the warranty, if one exists, as to anything relating to the particular subject-matter of the conveyance, are put an end to by the contract of conveyance afterwards entered into."

The general rule does not, however, apply to a contract which is collateral to and independent of the contract for sale, although contained in the agreement for sale.

There have been several recent cases on that point to which I will refer, but I must first draw attention to what may be regarded as the leading authority, *Palmer* v. *Johnson* (1884), 13 Q.B.D. 351.

The facts shortly were that the plaintiff had purchased at a sale by auction, property belonging to the defendant, described in the particulars of sale as producing a net annual rental of £39, and one of the conditions of sale was: "If any error, misstatement or omission in the particulars be discovered the same shall not annul the sale, but compensation shall be allowed by the vendor or purchaser, as the case may be." After conveyance it was discovered that the rental of £39 was a gross rental and that the net rental was considerably less. At the trial the jury found that there was no fraud.

It was held in the Court of Appeal that notwithstanding that the error was not discovered until after the conveyance, the plaintiff was entitled to compensation under the conditions of sale.

It appears from that case that the real question in all such cases is—what was the intention of the parties? That was very clearly stated by Bowen, L.J., who said: "Now it is commonly said that where there is a preliminary contract for sale, which has afterwards ended in the execution of a formal deed, you must look to the deed only for the terms of the contract, but it seems to me one cannot lay down any rule which is to apply to all such cases, but must endeavour to see what was the contract according to the true intention of the parties. Supposing the parties should make a parol contract with the intention that it should afterwards be reduced into writing and that which shall be reduced into writing shall be the only contract, then of course one cannot go beyond it; but if they intend, as they might, that there should be something outside such contract, they might agree that that should exist notwithstanding it was not in the contract which was put into writing. In the same way, when one is dealing with a deed by which the property has been conveyed, one must see if it covers the whole ground of the preliminary contract. One must construe the preliminary contract by itself and see whether it was intended to go to any and what extent after the formal deed had been executed."

Saunders v. *Cockerill* (1902), 87 L.T. 30, is a good case in point. There a purchaser agreed to buy a house which was in course of erection and the vendor agreed to supply and fix certain drains, stoves, etc., and complete the house in a proper and workmanlike manner. After completion the purchaser found that the house had not been built in all respects in accordance with the contract and that there were defects which he could not have discovered until after the conveyance. On these facts the purchaser was held to be entitled to recover damages for breach of the agreement.

To turn to the more recent authorities: *Lawrence* v. *Cassel* [1930] 2 K.B. 83, was very similar to *Saunders* v. *Cockerill*, but is important having regard to the methods employed in some modern development enterprises.

The facts were that the defendant agreed to sell to the plaintiff a plot of land part of a building estate, with a dwelling-house thereon in course of erection and to complete the house in accordance with plans of other houses, with fittings similar in all material particulars to those other houses erected on the estate. The purchaser completed his purchase. The conveyance to the purchaser contained no reference to the building of the house or to any work to be done by the defendant in the way of completing it or otherwise. It appeared that the house had not been properly constructed in accordance with the agreement, and it was held that the agreement to complete the house was collateral to the deed of conveyance and was not merged therein, and that breaches of that agreement having been proved, the plaintiff was entitled to recover damages.

There is one later case to which reference may be made. *Miller* v. *Cannon Hill Estates Ltd.* was a case where there was a contract with the owners of a building estate for the purchase of a house in course of erection. The purchaser had been shown a "show house" and told that the house to be erected on the plot purchased by him would be completed in a similar manner. The contract was for a plot of land with a messuage erected thereon, although in fact the house was then only in course of erection. After conveyance the purchaser found that the construction of the house was defective in certain respects and especially that it was so damp as to be unfit for habitation.

In an action for damages it was held that the plaintiff was entitled to succeed upon the ground of an implied warranty. The point that the conveyance might have superseded the contract was not apparently raised.

The result of a consideration of the authorities seems to be that the question whether a right of action for breach of the contract will survive after conveyance depends upon the intention of the parties, and appears to turn on the nature of the obligations undertaken and whether they are such as it may reasonably be inferred were not intended to cease upon the execution of the conveyance.

Landlord and Tenant Notebook.

Damages for Loss of User.

In what circumstances can a landlord or a tenant, deprived of the enjoyment of his premises by the wrongful act of the other party, recover damages for the loss and expense occasioned?

The circumstances of such deprivation vary, but even so it is not easy, if possible, to reconcile some of the authorities. I will take a number of them in chronological order, commencing 100 years ago, and then try to find common principles.

Woods v. *Pope* (1835), 6 C. & P. 782, was an action for failure to leave in repair. The ex-tenant paid into court the cost of effecting the repairs. The plaintiff claimed a further £13 15s. for loss of user, the repairs having taken six weeks. Gaselee, J., left this matter to the jury, who found for the plaintiff for the amount claimed. Leave was given to move to set the verdict aside, but the rule was discharged. The judgment of Tindal, C.J., reported in 1 Bing. N.C. 467, reads as if he considered the point an elementary one.

In *Green* v. *Eales* (1841), 2 Q.B. 225, a tenant sued a landlord for failure to observe his covenant to repair. What had happened was that the local authority, exercising powers conferred by a private statute passed during the term, had pulled down the adjoining house, with the consequence that the party wall had to be rebuilt, the plaintiff's house being uninhabitable meanwhile. The defendant had refused to repair when called upon, and the plaintiff had done the work

himself. Denman, C.J., dealt with the question under discussion as follows: "We are of opinion that the defendant was not bound to find the plaintiff another residence whilst the repairs went on, any more than he would have been bound to do so if the premises had been consumed by fire."

In contrast were the circumstances of *Jaques* v. *Millar* (1877), 6 Ch. D. 153, an action for specific performance of an agreement to grant a lease and for damages for the breach. The plaintiff took the premises for the purposes of an oil refinery, and on the defendant's refusal to complete lost fifteen weeks before he could find alternative accommodation. The decree was granted, and £250 damages awarded.

The next authority I propose to take, *Woodhouse* v. *Walker* (1880), 5 Q.B.D. 404, was not directly concerned with landlord and tenant, being a claim by a remainderman against the executor of a tenant for life who had neglected to repair. The judgment of Lush, J., remitting the case to the county court, which had decided a limitation point wrongly, concluded with: "It may save expense to the parties if we add that the proper measure of damages is the sum which was reasonably necessary to put the premises in the state of the repair in which the tenant for life ought to have left them."

But, in the well-known case of *Proudfoot* v. *Hart* (1890), 25 Q.B.D. 42, the question of loss of user pending repairs was raised by the landlord and dealt with by the referee; and, whatever may have happened to the rest of the case since, we still have the decision of Cave, J., on this point. The learned judge said: "If the tenant was bound to do the repairs to the extent of £47, he might very properly be ordered to pay £5 as the loss which was sustained by the landlord through having the house empty while it was being repaired."

This was followed by another landlord *versus* tenant case, *Joyner* v. *Weeks* [1891] 2 Q.B. 31, C.A., also relating to dilapidations at the end of the term, in which Esher, M.R., declared: "The rule is . . . a reasonably proper amount for putting the premises into the state of repair in which they ought to have been left," and described the said rule as convenient, simple and businesslike; but in the same year, in *Birch* v. *Clifford* (1891), 8 T.L.R. 103, in which the claim was to all intents and purposes similar, but in which the question was raised, it was held that an arbitrator to whom the question of dilapidations had been referred ought to have taken into consideration loss of rent or non-user. The amount was agreed, but in his judgment Wright, J., observed that damages would "probably" not represent the full amount of rent.

The tenant-plaintiff in *Budd-Scott* v. *Daniell* [1902] 2 K.B. 351, sued for breach of covenant for quiet enjoyment, the facts being that the defendant had had to paint the premises during the term, pursuant to a private statute the existence of which she had forgotten when granting the tenancy. The county court judge found that the plaintiff had reasonably had to move out for about a fortnight, and that this was an interference with possession amounting to a breach of the covenant; with some doubt, the Divisional Court upheld this finding of fact. The damages awarded were £15; but the report does not mention the rental.

In *City Tailors, Ltd.* v. *Barder; Same* v. *Rogers* (1929), 73 Sol. J. 235, the first action was by landlords and a new tenant against an old tenant whose sub-tenant had refused to move out at the expiration of the (head) lease; the second action was by the grantee of a lease commencing on the expiration of the said term, and was brought against the sub-tenant. The latter had held over against the wishes of all concerned for some two years. The damages awarded were £15 against the old tenant, £700 against the sub-tenant.

Coming to the present decade, we have authority on the subject in two tenants' claims for breach of covenant of quiet enjoyment. In *Trotter* v. *Louth* (1931), 47 T.L.R. 335, one plaintiff was tenant of two floors of a building in the West End of London, one floor of which she had sub-let to her co-plaintiff. During the term the landlord was compelled to comply with a dangerous structure notice issued by the county council (and omitted to serve his tenant with a counter-notice, which would have protected him). The execution of the necessary work rendered occupation of the premises impossible for a time. Damages were awarded to the first plaintiff on her claim for breach of covenant for quiet enjoyment and trespass, and to the second plaintiff in respect of trespass only, representing the loss of user. The amounts had been agreed.

The other authority is *Cruse* v. *Mount* [1933] 1 Ch. 279, the matter being referred to parenthetically at the end of the report, for the main point in issue was the old question of landlord's implied warranty of fitness. The tenant had, however, had to move out for a time in consequence of what amounted to breach of covenant for quiet enjoyment, and we are told that damages for this breach were to be the expenses of (*a*) removal, (*b*) storage, and (*c*) returning, the furniture.

It is not easy to deduce principles from these cases. Beginning with claims by landlords for damages for failure to repair, reconciliation can be effected only if those cases in which the point was not raised are ignored. When it has been taken, damages have been awarded; but on the question of measure we have no guidance. L.T.A., 1927, s. 18 (1), does, of course, affect the matter when the particular case of intended demolition arises; but the general part of the sub-section, which is merely restrictive, laying down that damages are not to exceed the diminution in value of the reversion, would not apply; for disrepair which it will take time to remedy, and the remedying of which cannot be effected while the premises are occupied, reduces the value of the reversion.

A tenant's prospect of recovering from his landlord, as damages for breach of covenant to repair, the expenses of living elsewhere appear to be remote. (Indeed, his proper course in the event of persistent refusal is difficult to determine.) But if he can establish a breach of the covenant of quiet enjoyment, he is entitled, if not to compensation for loss of user, at least to removal and storage expenses. And an intending tenant aggrieved by refusal to complete may claim in respect of resulting loss.

As to unlawful holding over, I have cited one case which shows a differentiation according to the conduct of the defendant. Generally speaking, of course, mesne profits are measured by rent; but one has little sympathy with landlords who do not avail themselves of the excellent remedies available in so many cases, the claim for double value and its complement, the claim for double rent, provided by L.T.A., 1731, and the Distress for Rent Act, 1737, respectively.

Our County Court Letter.

THE REMUNERATION OF TAILORS.

In *Willerby & Co.* v. *Milligan*, recently heard at Manchester County Court, the claim was for £8 8s., as the price of an evening dress suit. The latter was required for Christmas, and was ready on the 24th December, but the defendant afterwards returned the suit, and failed to call to enable it to be altered. Tobacco dust, in the jacket pockets, indicated that the suit had been worn, but this was denied by the defendant, who had only tried the suit on. The plaintiffs' evidence was that it was very unlikely that the tailor smoked while making the suit, and His Honour Judge Leigh directed the defendant to try the suit on again. It was then held (after inspection) that the trousers were too long, but that the plaintiffs were entitled to the agreed price—except in respect of two breaches of warranty. These were that the suit should be a proper fit, and that it should be delivered in a reasonable time for Christmas. The defendant was thus entitled to 15s. for his wife's fare from Blackpool, when collecting the suit, and to 10s. 6d. as the cost of the required alterations. Judgment was therefore given for the plaintiffs for £7 2s. 6d. and costs.

SLOT MACHINES ON LICENSED PREMISES.

In *Mac Fisheries (Wholesale and Retail), Ltd.* v. *Exhibit Machines and Merchandise Co., Ltd., and Farey*, recently heard at Chelmsford County Court, the claim was for £6 9s. 6d. as the price of ten turkeys. The plaintiffs' case was that in December, 1934, the second defendant (who was then employed by the first defendants) had ordered the turkeys through the wife of the licensee of an hotel. In the hotel there was a "crane" machine, whereby a player picked up prizes from inside a glass case. This was a game of skill, and one turkey was kept as a "token" prize at the hotel, from which the other turkeys were removed by the second defendant. The first defendants denied that the second defendant had any authority to order turkeys, as he was only a service man, and was supplied with the goods for insertion in the machines as prizes. The distribution of turkeys as "token" prizes on licensed premises would be illegal and was no part of the first defendants' method of business. The second defendant contended that his suggestion of token prizes was approved by the service manager of the first defendants, to whom it was agreed the bill should be sent. The licensee's wife gave corroborative evidence, viz., that prizes were not restricted to those obtainable within the four walls of the machine. His Honour Judge Hildesley, K.C., accepted the version of the second defendant, in whose favour judgment was given, with costs. Judgment was given for the plaintiffs against the first defendants, with costs, including those payable to the second defendant.

THE AGRICULTURAL HOLDINGS ACT, 1923.

In *Meggeson* v. *Dodds*, recently heard at Chelmsford County Court, an award was claimed by way of damages for breach of covenant, viz., neglect to cultivate the land in accordance with the rules of good husbandry. The applicant admitted that he had failed to obtain a certificate of such neglect from the Agricultural Committee of the Essex County Council, but contended that this circumstance was no evidence that the holding was in fact being properly cultivated. The respondent's case was that, not only had the Agricultural Committee refused their certificate, but an arbitrator had made an award to the effect that the holding was being cultivated according to the rules of good husbandry. His Honour Judge Hildesley, K.C., held that the refusal of the certificate was no evidence of good cultivation, and that the arbitrator's award was not binding on the parties, and was not conclusive on the above issue. An award was therefore made in the applicant's favour, with costs on Scale B.

THE LIABILITIES OF DENTISTS.

In the recent case of *Jennings* v. *Lawson* at Liverpool County Court, the claim was for damages for negligence in the extraction of a tooth. The plaintiff, on the defendant's advice, had had a decayed tooth extracted, for which she paid a fee of 2s. Her jaw began to ache a few hours later, and on a subsequent visit the defendant said it was a clean extraction. On a third visit he advised the extraction of the next tooth, but the plaintiff refused, and saw a doctor. Another dentist then took an X-ray photograph, which revealed a broken root. This was removed, under an anæsthetic, but the plaintiff suffered much pain in the meantime. Her evidence was that the defendant had not examined the tooth, after extraction, but had thrown it away at once. This was denied by the defendant, whose case was that he had told the plaintiff the tooth was broken, and therefore advised her to return for treatment. He had told her it was a clean socket, not a clean extraction, but her jaw was not fit for the removal of the broken part, on her later visit. His Honour Judge Dowdall, K.C., held that the defendant was negligent in telling the plaintiff what was either untrue or misleading. Judgment was given for the plaintiff for £21 and costs.

Reviews.

Company Prospectuses. By H. M. Shurlock, of Lincoln's Inn, Barrister-at-Law. 1935. Demy 8vo. pp. xii and (with Index) 110. London, Liverpool, Birmingham and Glasgow: The Solicitors' Law Stationery Society, Limited. 9s. 6d. net.

This is one of those practical guides which most lawyers and business men will welcome as a useful addition to their works of reference. It sets out the relevant sections of the Act and the important decisions with the utmost succinctness and clarity. The statement, for example, culled from the judgment in the House of Lords in *Nash* v. *Lynde* [1929] A.C. 158, at p. 164, admirably sums up the important tests with regard to what is a prospectus, namely, that the document in question should be proved to have been shown to any person as a member of the public and as an invitation to take shares referred to therein. There are a number of useful appendices, containing forms, a summary of information to be contained in prospectuses, rules of the Stock Exchange with regard to prospectuses, permission to deal and official quotations, and relevant sections of the Companies Act, 1929. The fullest practical guidance is given to the necessary contents of a prospectus as required by the Act and the rules of the Stock Exchange. The practitioner using this work should have little difficulty in compiling both an attractive and a legally satisfactory prospectus.

Books Received.

The Law of Flats. By G. T. Honniball, B.A. (Oxon), of the Inner Temple, Barrister-at-Law. 1935. Demy 8vo. pp. xv and (with Index) 156. London: The Estates Gazette, Limited. 10s. post free.

Herbert Fry's Royal Guide to the principal London and other Charities. 1935. Crown 8vo. pp. lii and 325. London: The Churchman Publishing Co. Limited. 2s. net.

Libel. By Edward Wooll. 1935. Crown 8vo. pp. 250. London and Glasgow: Blackie & Son, Limited. 7s. 6d. net.

A Guide to High Court Practice. By J. J. Wontner. 1935. Crown 8vo. pp. (with Index) 224. London: H. F. & G. Witherby, Limited. 8s. 6d. net.

Tax Cases. Vol. XIX., Part III. 1935. London: H.M. Stationery Office. 1s. net.

A Treatise on Medical Jurisprudence. By Benton S. Oppenheimer, LL.B., LL.M., of the Cincinnati Bar. 1935. Demy 8vo. pp. xi and (with Index) 290. London: Baillière, Tindall & Cox. Baltimore: William Wood & Company. 18s.

Complete Practical Income Tax. By A. G. McBain, Chartered Accountant. 1935. Demy 8vo. pp. xxi and 311. London: Gee & Co. (Publishers) Limited. 7s. 6d. net.

The Receiver and Manager in Possession. By Andrew Binnie, F.C.A., C.A., and Brian Manning, J.P., F.C.A. Third Edition, 1935. Demy 8vo. pp. xvii and (with Index) 128. London: Gee & Co. (Publishers) Limited. 7s. 6d. net.

Summary of Company Liquidations, Arrangements and Reconstructions. By A. H. Harboard, A.C.A. 1935. London: Gee & Co. (Publishers), Ltd. 1s. net.

Modern Accounting. By W. Desborough, O.B.E. 1935. London: Gee & Co. (Publishers), Ltd. 6d. net.

The Financial Function in Industrial Administration. By Wm. L. Morgan, F.C.I.S., F.I.I.A., C.P.A. 1935. London: Gee & Co. (Publishers), Ltd. 9d. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

To-day and Yesterday.

LEGAL CALENDAR.

21 OCTOBER.—On the 21st October, 1913, Lord Reading was sworn in as Lord Chief Justice, succeeding Lord Alverstone, who had held the office for thirteen years. Only one incident marred the solemnity of the occasion. During the Lord Chancellor's eulogy of the retiring judge, a barrister in court loudly exclaimed: "Speak for yourself, Lord Haldane." He afterwards explained that he was deaf and thought the references were to the new Chief Justice. Lord Reading was destined to sit upon the Bench for seven years, facing the immense difficulties of the position in time of war.

22 OCTOBER.—On the 22nd October, 1839, all London was startled to read in the morning papers news of the "sudden death of Lord Brougham." Biographical sketches and comments on his career there were, too, but most of these were very hostile, for at that time the former Chancellor was very unpopular. As a matter of fact, the report was wholly incorrect, and Brougham was destined to live nearly thirty years more. The rumour had arisen from an accident in Westmorland, when his carriage had overturned, but he had escaped unhurt. There was a strong suspicion that he had himself set the story of his death about to see the public effect.

23 OCTOBER.—It was to the influence of his patron, Lord Danby, that Sir William Scroggs owed his appointment as a Justice of the Common Pleas on the 23rd October, 1676. Nineteen months later he became Chief Justice of the King's Bench. Talent he had, and a handsome appearance, and "speech witty and bold," but his debauched character and loose life made him totally unfitted for the judicial bench, which his brutality towards prisoners continually disgraced. His worst work was done as presiding judge in the "Popish Plot" trials.

24 OCTOBER.—Taking the coif used to be as much of a risk as "taking silk" is now, and John Martyn, enjoying as he was a very considerable practice, was not anxious to do so. Three times he disobeyed the summons to take upon himself the dignity of serjeant-at-law, and, at last, as there were several other recalcitrants, Parliament took the matter up in 1417, compelling them to comply under pain of heavy penalties. In 1420, Martyn was appointed a Justice of the Common Pleas. He died on the 24th October, 1436.

25 OCTOBER.—On the 25th October, 1758, William Blackstone read the first of the Vinerian lectures at Oxford. Thus began his great Commentaries. John Viner, the compiler of an "Abridgment of Law and Equity," had two years before bequeathed £12,000 for the purpose of founding a chair of English law at the University—an innovation to which much attention was attracted, both by Blackstone's legal learning and by his literary skill. In opening his first lecture, he said that "he must be sensible how much will depend upon his conduct in the infancy of a study which is now first adopted by academical authority." His lectures led him to success and a seat on the Bench.

26 OCTOBER.—On the 26th October, 1798, Sir William Scott, Lord Eldon's brother, was appointed Judge of the High Court of Admiralty. Lord Brougham said of him: "There has seldom, if ever, appeared in the profession of the law anyone so peculiarly endowed with all the learning and capacity which can accomplish, as well as all the graces which can embellish the judicial character . . . His judgment was of the highest cast; calm, firm, enlarged, penetrating, profound. His powers of reasoning were in proportion great, and still more refined than extensive."

27 OCTOBER.—Sir William Thomson, a Baron of the Exchequer, died at Bath on the 27th October, 1739. He had been ten years a judge.

THE WEEK'S PERSONALITY.

Sir William Thomson had an extremely varied legal career. The son of a bencher of the Middle Temple, he was called to the Bar there in 1698. Sixteen years later, he obtained his first judicial appointment when he slipped into the Recordership of London through the casting vote of the Lord Mayor. To this office he clung tenaciously for the remainder of his life, no matter what other positions he came to fill. The first fruits of his good fortune came in the shape of the opportunity to read the address of congratulation to George I. From this experience he emerged a knight. In 1717, he found himself Solicitor-General, but in this capacity he nearly wrecked his career. At that time, joint stock companies were booming, and there was a scramble for charters of incorporation, and the Attorney-General benefited by the fees more largely than he. Thereupon, Thomson not only accused him of corruption, but intimated that he had actually auctioned charters in his chambers. An investigation cleared the character of the Attorney-General, and that was the end of Thomson as a law officer, but by 1724 he had so far recovered his fortunes as to be granted an annuity of £1,200 a year, and finally, in 1729, he became a Baron of the Exchequer.

SCOTS MARRIAGE LAWS.

The Secretary of State for Scotland recently decided to appoint a committee to inquire into the alarming condition of the Scottish marriage laws. The peril of easy-made matrimony across the Border is very concisely set out in Lord Neaves' "Tourist's Matrimonial Guide to Scotland," which begins:—

Suppose the man only has spoken,
The woman just given a nod,
They're spliced by the very same token
Till one of them's under the sod.
Though words would be bolder and blunter,
The want of them isn't a flaw,
For "nutu signisque loquuntur,"
Is good Consistorial law.

If people are drunk or delirious,
The marriage of course will be bad,
Or if they're not sober or serious,
But acting a part or charade;
It's bad if it's only a cover
For cloaking a scandal or sin,
Or talking a landlady over
To let the folks lodge at her inn.

GOOD LAW IN VERSE.

These verses figured very aptly in an English case in 1899, when Marshall Hall appeared for a husband whose wife was claiming nullity on the ground that he had previously contracted a Scots marriage with a girl named Maggie King, whom he had undoubtedly treated as his wife before witnesses. In cross-examination, the Scots lawyer, who gave expert evidence for the wife, admitted that Lord Neaves' verses accurately summarised the law, and Marshall Hall succeeded in persuading Gorrell Barnes, J., that the facts of the case brought it within the exception of the last part of the second verse, so that the suit was dismissed. Thus, till to-day, the ghost of Gretna Forge and the other marriage houses along the Scottish Border is not laid, even in England. Of all the mad memories of that once flourishing matrimonial industry, surely one of the funniest is that practitioner at the Springfield toll bar in the eighteen-thirties, whose calling went to his head, so that he would creep up behind any chance couple and begin to mutter the magic words. The rural bachelor fled in terror at his approach.

Mr. Samuel Hugh Price, solicitor, of Wallington, Surrey, for over thirty years Ward Clerk of the City Ward of Walbrook, eft £3,569, with net personalty £3,466.

THE LAW OF PROPERTY ACTS, 1925.

By A. F. TOPHAM, Esq., K.C.

A Verbatim Report of The Second of a Series of Lectures Delivered to The Solicitors' Managing Clerks' Association

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Mr. Topham: Mr. President and Gentlemen, before I proceed with this evening's lecture, I want to make one slight correction in something that I said last time. Speaking about the Royal Commission that was appointed to deal with the Land Transfer Act and Registration of Title, I should have said that it was Lord St. Aldwyn who was the Chairman. Other members of the Commission were Lord Buckmaster and Lord Cave, before they were Lord Chancellors; you will remember they afterwards became Lord Chancellors. Lord Wrenbury was not on the Commission. I was wrong in stating that, and that has been corrected in the report of the lecture which is being printed. That shows the advantage of having a printed report after the lecture; I am able to glance through it and correct any mistakes that I make in speaking, as I did then, from memory. It also enables me to speak rather more freely when I know that I have a chance to see that I have not gone too far in some of my statements. I verified that by looking at the report of the Royal Commission, and I found (and it is rather interesting, I think) a passage in which the late Mr. Charles Sweet, the conveyancer, put forward his views which were the germ of the whole of this legislation; and I should like to quote to you what I found he said in his evidence. He said this: "I think that the only way of putting the law of real property on a satisfactory basis is to abolish the antiquated doctrines of tenure, seisin and uses, and to make land the subject of absolute ownership, like stock or ships. If this were done, it would be possible to carry out an ordinary purchase or mortgage of land by a document as simple as a common transfer of stock or a bill of sale of a ship, and the registration of such a document would be a perfectly simple matter." Now, you see that was very prophetic. It is the basis of the whole of this legislation, although perhaps his hope that it would be as simple as all that was rather too optimistic.

Another very interesting thing which has happened since I lectured last is this: I referred to Sir Leslie Scott as being Chairman of the first Select Committee. I am sure we are all very pleased to see he has now been appointed one of the new Lords Justices.

You will no doubt have noticed that I invited any persons who had questions to ask arising out of the lectures to write to the Association, and I said I would deal with those queries either at once, or as they arise in the appropriate lecture. I appear to have rather misled, at any rate, one of the audience last time when I said that when land is held under a trust for sale it is taken outside the Settled Land Act. What I meant was that it is in form taken outside the Settled Land Act. There is a group of sections, 23 to 33, in the Law of Property Act which deal with land held on trust for sale. Under the old statute, land held on trust for sale was deemed to be settled land, and certain powers were given under s. 63 of the Settled Land Act. What I meant was that that is bodily taken out of the statute and put into the other statute, the Law of Property Act. I did not mean to say that when you are dealing with trusts for sale you never have to look at the Settled Land Act, because, as is pointed out in the letter written to me, there are cases where you must refer to it, and I shall be dealing later with some of those; for instance, when the trustees for sale are given by the Law of Property Act all the powers of the tenant for life under the Settled Land Act. So, of course, you must refer occasionally to the Settled Land Act when dealing with trusts for sale.

Another writer suggested that these questions as between a trust for sale and a settlement could all have been avoided if, as he puts it, the tenant for life had been put behind the curtain. What he means by that is that everything should be conveyed to trustees, and if you want the tenant for life to carry out the power he could do that under a power of attorney from the trustees. That you can do. There are provisions in the Act that if you wish to do it that way you can convey the land to trustees on trust for sale, and they can then delegate their powers to the tenant for life. So you can do it in that way. But, as it is, you have to deal, more particularly in case of settlements in existence before the Act, with the question whether this is a trust for sale or whether it is a settlement, and there are cases where it is sometimes not altogether easy to decide that question. You can very often get over the difficulty without going to the court, and one way is, if you do not quite know whether one set of trustees hold on trust for sale, or another set of trustees are statutory owners having all the powers of the tenant for life, by appointing the same persons to be trustees in both capacities. Another way is, if you are not sure whether a certain person is tenant for life having the powers of the tenant for life, or whether trustees have the powers, you can get over it by conveying in both ways. It is not so artistic, perhaps, but you can get a good title one way or the other.

The same writer raises a point which is hardly germane to this particular lecture, but I will deal with it shortly. He complains that owing to the rush of modern business you are always being pressed to take a risk when you are purchasing land; there is rather a tendency to take a chance and not investigate the title even to the limited extent you are supposed to do it now. You are really taking a serious risk when you do that. It is no doubt uncomfortable to feel that your client thinks you are making an unnecessary fuss perhaps, but counsel have to suffer in the same way; very often we have to take objections where our clients think we are being unnecessarily fussy; and I think the best way out of the difficulty is this: that you should explain to your client that if he wants the thing done in a slipshod way he is taking a risk, but if he will instruct you to take that risk you will go ahead. That, at any rate, absolves you from blame, or from a possible action for negligence, so long as you have it quite clear in writing that he has instructed you to go ahead after you have told him what the risk is. But it is, and always has been, a substantial risk. There is a story told (I dare say some of you have heard it) of a well-known conveyancer who spent his life and made a small fortune in investigating titles. It was some time ago, and the investigation of title was a much heavier matter than it is now. He came to the conclusion that it was only in one case out of a thousand approximately that anything serious went wrong. Towards the end of his life he invested the greater part of his savings in a considerable estate of land. He was very busy, and he thought he would take the risk as it was only one in a thousand, but unfortunately for him it was the one in the thousand, and it turned out that there was a very serious flaw in the title; I think it was an undisclosed mortgage of a considerable extent, and he lost a great deal of money. Except in very small purchases, where the purchase price is so small that a person can take a risk, or the cost of taking the case through the courts is out of proportion, it is really always worth while taking that extra care by way of a kind of insurance.

At the close of my last lecture I referred to the case of *Re Norton* [1929] 1 Ch. 84, and I said the facts were so complicated that I thought perhaps it would be advisable not to try and get them before you. But I have rather reconsidered that, because it is one of the cases which illustrate the sort of difficulties which arise as between a trust for sale and a settlement, and the solution of it was an important one. I think I can keep the essential facts fairly short. There was a settlement of 1894. That was followed by a long series of documents which I will not trouble you with. The net result of the settlement of 1894 and the various other documents was that a certain Lord Norton, who was the second Lord Norton, was tenant for life. There was, as is usually the case, a jointure rent-charge under the settlement to a certain widow, and there were portions, and there was a legal portions term; and there were, of course, trustees for the purposes of the settlement. As it consisted of a large number of documents, all those documents were treated as being one settlement, and certain trustees were appointed to be trustees of that compound settlement. So far, it was all quite straightforward, but among those numerous deeds were some deeds of 1911, and under those, on the death of the second Lord Norton, the land would pass to another set of trustees on trust for sale. It was a very complicated settlement, but the position was such that there was no person who could be treated as having the powers of a tenant for life, or in the position of tenant for life, but by that settlement the trustees for sale were given all the powers of a tenant for life under the Settled Land Act. That was rather anticipating what was done in the Law of Property Act, because those deeds were in 1911. Then, in 1926, that land being obviously settled land with a tenant for life, a vesting deed was executed, and that, as I think I pointed out to you last time, would turn the legal portions term into an equitable term; that is to say, where there is an old settlement with legal portions terms, as soon as you get a vesting deed those legal terms become equitable terms, unless the trustees require actually to raise money by means of the term, and then they would do that by a legal term. Now, in December, 1926, that is after the Law of Property Act came into force, the second Lord Norton, the life tenant, died, and as this was settled land, probate limited to this settled land was granted, as is the proper course now, as you know, to the trustees of the settlement as his special personal representatives in respect of the settled land. So you got this: that when this question arose after the death of Lord Norton, the legal estate had become vested in the trustees of the compound settlement, but a trust for sale had arisen taking effect on the death of Lord Norton which was vested in another set of trustees, and the question was, was this settled land, or was it land held under a trust for sale? The two sets of trustees were acting by different sets of solicitors, which no doubt added some interest to the problem. It was not altogether an easy problem, because there was a trust for sale, and it was in one sense an immediate trust for sale, but my friend, Mr. Manning, K.C., who appeared for the compound settlement trustees succeeded in showing that the land remained settled land, by pointing to s. 3 of the Settled Land Act, which says this: That where land has been the subject of a settlement it shall remain settled land so long as any of the charges or portions or powers of charging under it remain. This was obviously settled land before Lord Norton died; it therefore remained settled land so long as these jointures and portions remained unpaid. So that it remained settled land, and had rightly passed to the trustees of the compound settlement as special representatives. Mr. Bradley Dyne and I were appearing for the other set of trustees—the trustees who had the trust for sale—and we said: "That may be, but, of course, when the land vests in the trustees of the settlement on the death of the tenant for life, they must make a vesting assent in favour of a new tenant for life, if there is one, or, if not, of the statutory owners; and as our trustees have been given all the powers of the tenant for life, they become statutory owners; and the judge held that that contention was correct also. We also made other suggestions which he did not approve of, but, at any rate, the result was that all parties were happy—at least, all the parties represented in court, because the position was this, that our clients were statutory owners, and so could exercise the powers of sale, but they had to pay the purchase money to the other set of trustees of the settlement, who would of course, look after the investment. But the real essence of that case is to remember that when you have once got a settlement—something which before or on the 1st January, 1926, was a settlement, or which at any time is a settlement—it remains settled land so long as any charge or power of charging, or any similar trust, remains existing under the original settlement.

Now I come to another point which was decided on the Act. It being very important to know whether there is a trust for sale or not, the Act expressly deals with the case where there is a trust either to retain or sell. Apart from the Act, it was not always easy to say is there a trust for sale when a testator or settlor has given land to trustees on trust to sell or retain; and the tendency of the old cases was to say that in that case there was not a trust for sale, because there was discretion not to sell; but the Act provides that where there is a trust to retain or sell, it is to be construed as a trust to sell; that is, an immediate trust for sale, but with power to postpone. You should notice, however, that that only applies to dispositions coming into effect after the passing of the Act. It was therefore held not to apply in two cases where the settlement had been made before the Act, and the old cases were made to apply. One is *Re White's Settlement* [1930] 1 Ch. 179, where a deed had been executed before the Act was passed, and land had been conveyed to trustees on trust to retain the same in its present condition, or with the consent of the tenant for life to sell. That, you see, by itself raised a considerable doubt as to what they were to do, and the court held that you had to apply the old law as before the statute, because the deed was before the Act, and as the deed went on to give the trustees certain powers of leasing, mortgaging and management, it was held that that, applying some earlier cases, showed an intention that the direction to sell was more or less optional, and was not a binding trust for sale.

Again, in another case, *In re Smith and Lonsdale's Contract* [1934] W.N. 36; 78 Sol. J. 173, there was a direction to trustees to sell "in building plots for building purposes and not otherwise." There, there was a direction to sell, but only for one particular purpose, and that was held not to create a trust for sale, because it meant they were only to sell provided they could sell, I suppose, in an advantageous manner for building purposes.

You will remember, no doubt, that under the Act, still dealing with trusts for sale, there is by the statute an implied power to postpone a sale in every case, or, rather, not in every case, because the statute says that there shall be an implied power to postpone sale in every case of a trust for sale unless a contrary intention appears. Now that exception, "unless a contrary intention appears," was applied in the case of *Re Ball* [1930] W.N. 111, 120; 74 Sol. J. 298. If you look at it in the report in *Weekly Notes* it is very confusing, partly because there was either a slip or a misprint in the report, and as you read it in the book, unless you have written in some corrigenda which come later in the volume, you will find it does not make much sense. In any case, I think it is rather a puzzling case. What happened there was that there was a conveyance or grant to trustees on trust for sale. They were to pay the income to certain persons during their lives, and they were given an express power to postpone the sale at their discretion, and after the death of the last of those lives they were to hold in trust for ten persons in equal shares. Under the old authorities it had been held that where there is a trust for sale with

power to postpone, and the property passes absolutely to certain persons, that is to say, certain persons become absolutely entitled, they are entitled to say, "The power to postpone has come to an end; we are all now *sui juris* and absolutely entitled, and you must sell at once"; and Mr. Justice Luxmoore held that as there was an express trust for sale with an express power to postpone in the settlement, that excluded any implied trust for sale or power to postpone under the statute, and accordingly you must construe the settlement as if the Act had not been passed, and when the tenants for life had all died there was an immediate trust for sale and no power any longer to postpone. I am bound to confess that that decision a little puzzles me, for this reason, that when the tenants for life, the persons entitled to the land or proceeds of sale, were ten persons entitled in equal shares, I am bound to say that apart from this decision I should have thought that there being ten persons entitled to undivided shares, a new trust for sale would arise under the Act by reason of their holding the land on the statutory trusts, and that being a statutory trust for sale, power to postpone would have been implied. However, there is that decision, and because it is perhaps not quite what one would have expected, it is one that you should bear in mind. It really comes to this, that where in a document you get an express trust for sale with an express power to postpone, and you gather from that that the power to postpone comes to an end on a certain event, then even the statutory power to postpone will also come to an end.

Then I come to the powers which are given to trustees for sale by reference to the Settled Land Act, and that is where it is quite clear that you must bring in the Settled Land Act when you are dealing with trustees for sale. By s. 28 of the Act it is provided that trustees for sale shall have all the powers of a tenant for life and of the trustees of a settlement including the powers of management conferred by the Settled Land Act during a minority. That section can be read in one of two ways. I do not know whether you noticed it as I read it out. They are to have the powers of a tenant for life and of the trustees of a settlement including the power of management conferred by the Settled Land Act during a minority. It may mean that during a minority of any person the trustees are to have those powers, or it may mean that the trustees for sale are at any time to have the powers of management which are conferred on trustees by the Act during a minority. That question arose for decision before Mr. Justice Clauson in rather an interesting case—*Re Gray* [1927] 1 Ch. 242; 70 Sol. J. 1112. It was rather a puzzling case, but the judge, who exercised perhaps a little ingenuity, managed to reach a decision which seems to me eminently just, and also, if I may say so, well justified by the words of the section. What happened there was this: there was a trust for sale, and the proceeds or the income of the proceeds was to be paid to Robert Gray for life with remainder to his children. Robert Gray became bankrupt, and his life interest was sold by his trustee in bankruptcy, and therefore the beneficial owners of the life interest had not got much interest, of course, in what ultimately happened to the property. Between the bankrupt and his assignees the property had been allowed to get into a very bad state of repair. The public trustee was the trustee of the settlement, and he was anxious as trustee that the property should be put into repair, and he rather felt that it was not fair on the children, the people entitled in remainder, that the repairs should be paid for out of capital when they were repairs which the tenant for life ought properly to have done himself. You cannot make a tenant for life do the repairs; he is not impeachable in respect of what you may call permissive waste; you cannot sue him and make him do repairs; but if the tenant for life wants the house kept in repair, he has to pay for it out of his own pocket, and the tenant for life is expected to keep the property in reasonable repair. In this case he had not done it, and the argument put forward on behalf of the Public Trustee was this, under the section I have read to you: The trustees for sale have the powers of management which are conferred on trustees by the Settled Land Act during a minority; and then by referring to s. 102 of the Settled Land Act the court found this: so long as the person entitled is an infant, and so on, the trustees may, among other things, repair the houses and buildings; and then by sub-s. 3, the trustees may out of income pay the expenses of the exercise of any of the powers under this section. So it is quite clear that trustees who are trustees under the Settled Land Act for an infant may pay for repairs out of income; and Mr. Justice Clauson held that the Public Trustee in this case, that is the trustee for sale, had, although there was no infant in question at the time, all the powers of management conferred by the Settled Land Act on trustees during a minority, and he ordered the Public Trustee to do the repairs and pay for them out of income. As I say, I think it was a very just result, and also a construction of the statute which was also what the framers of the statute would have intended.

Some rather curious cases occur on what is called "the condition of residence." You sometimes find (generally in a will) that an attempt is made to give a house to some person so long as that person continues to reside in the house. No doubt that is really meant to give a person just the liberty or option to stay in the house if he or she wants to, and after that they have no further interest in the house; but the difficulty you are met by in cases of that kind is this: as soon as you get a person who is entitled for life or until the happening of some event, that person has the powers of a tenant for life, and any provision which is made in a will or settlement which would tend to prevent the exercise of the powers by the tenant for life is void, and so it is not very easy to make such a condition effective. If the person is tenant for life and wants to cease to reside, that person has only to say: "I want to sell or let this house under my Settled Land Act powers. I find this condition about residence rather deters me from exercising those powers, and I ask the court to say that that condition is void," and the court is bound so to hold. The cases seem to me to indicate this, that if you really want to make it a condition that a certain person shall reside in a particular house, and shall not have any interest in the house and property afterwards if he or she does not continue to reside, the best way to produce that result is to grant the land to trustees for sale, and thereby give them the powers, because the trustees for sale would not necessarily be deterred from exercising their powers if they thought somebody else might lose the house, and so you would not then put anything in which would tend to prevent the exercise of the power. Then if the beneficiary says to the trustees: "I want you to sell this property and exercise your powers, because I do not want to live here any longer," they might say: "No, we do not want to sell; we do not think the testator meant us to sell; if you cease to reside you lose your interest." On the other hand, of course, if they were to elect to sell, exercising their powers while the beneficiary still remained in possession, no doubt he would continue his rights. I gather that from two or three cases which have been decided. One was *Re Acklom* [1929] 1 Ch. 195; 72 Sol. J. 810. There was a gift direct there to the tenant for life, with a condition that she must continue to reside; but the tenant for life wanted to know what would happen if she did let or sell the house in the exercise of her Settled Land Act powers. The court held that to the extent that she wished to exercise those powers, the condition of residence was void, and if she sold the house she would be entitled to the proceeds of sale, although she would not continue to reside; or, if she let it, she would be entitled to the rents.

A rather more complicated case occurred in *Re Patten* [1929] 2 Ch. 276. The testator there directed his trustees to retain £3,000 and apply the interest of that money in payment of taxes, rates and repairs of a certain house of his, 44, First-avenue, Hove. Then he said: "I desire that my aunt," whom he named, "shall have the use of the house and

my furniture free of cost as long as she may require them, but without power to sub-let." This, I think, was more or less a home-made will. "On the termination of her occupation the house is to be sold, and from the proceeds added to the £3,000" he gave gifts to various charities. Then he went on: "When the house is sold I wish my nephew George to have my furniture." That raises a good many problems, as you see. In the first case it was held by Mr. Justice Romer, as he was then, that that provision "without power to sub-let" was simply void; it was an attempt to take away the powers of a tenant for life under the Settled Land Act. Then as to the £3,000 gift, if the aunt ceased to reside for some reason other than the exercise of her power—if she simply said: "I want to go and live somewhere else"—the £3,000 would go over to the charities. On the other hand, if she exercised her power of leasing under the Settled Land Act, then the rates and everything were to be continued to be paid out of the £3,000, and thus she would get more rent. If she were to sell the house, again, of course, the rates could not be paid any longer, because there would not be any rates to pay; but if she ceased to reside for any reason other than the exercise of her powers the rates would not be paid, and the £3,000 would go over. Now that is rather complicated, but you see the decision was based on this, and this would apply, I think, to every case where there is a condition of residence or a gift over if the person ceases to reside. That is perfectly valid, except so far as it tends to prevent the exercise of Settled Land Act powers. Whenever you find that it is standing in the way of the exercise of those powers, you treat it as non-existing.

I came across a rather curious case of a provision that was held to be void as tending to prevent a person from selling. That was a case where a testator left his house to a nephew for life, and he provided that a certain mausoleum in the grounds of his house, which was in the middle of the lawn in front of the drawing-room, where the remains of his dog Pompey were interred, should never be disturbed, and if the house was sold, the condition should be passed on to the purchaser. That was held to be void as tending to prevent the exercise of his Settled Land Act powers. I do not know that any case has come up for decision where a trust for sale has been created so that the trustees have all these powers and then there is a condition insisting upon residence. There was one case, however, which seems to suggest that if it were an ordinary case of trust for sale the condition of residence might be perfectly valid, because it was held in that particular case that it was not valid only because if it had been held to be valid the rights of the parties would have been altered as between the time before the Act and the time after the Act. The case is *Re Davies' Will Trusts* [1932] 1 Ch. 530. It came before Mr. Justice Maugham, as he then was, and it is an interesting case because there the judge quite deliberately adopted a benevolent construction of the Act, and said he was doing so. The facts were these: The testator died in 1922, that is, before the Act came into force, and he devised a certain farm to the plaintiff on trust to pay the income equally between the plaintiff herself and his two daughters and his nephew, and as to the nephew, it went on like this: "So long as he shall reside upon and assist in the farm." The result of that will, immediately on the testator's death, was that there were four persons who were entitled to live in the house during their lives; there was the plaintiff and her two daughters and the nephew, the nephew's interest being limited in that way, "so long as he shall reside upon and assist in the farm." Now before 1926 the farm could have been sold by those four persons together acting as tenant for life, and accordingly, if they were going to sell the farm, those words, "so long as he shall reside upon and assist in the farm" would have been void as regards the nephew, because they would have tended to prevent him concurring in the exercise of Settled Land Act powers. But then on the passing of the Law of Property Act at midnight on the 31st December, the position completely changed, because you will see the plaintiff held the land in trust for four persons as tenants in common for life. Therefore the land was then held in trust for persons in undivided shares, and she, the trustee in whom the property was so vested, forthwith held the property on the statutory trusts, that is to say, on trust for sale. The question then arose, if she as trustee for sale sold the land, would the nephew be deprived of his interest in the proceeds of sale, because he would have ceased to reside and assist in the farm. Mr. Justice Maugham decided in favour of the nephew on this ground, that before 1926 the nephew's interest could only have been determined by the exercise by him of the powers under the Settled Land Act, and, if so, the condition would have been void; and he thought that beneficial rights were not intended to be altered. He said this: "It is right to place a benevolent construction on the various sections, and in case of doubt to avoid the result that rights possessed before the coming into force of the Act are seriously affected or destroyed," and so he decided in favour of the nephew. Now that is what I have referred to as "benevolent construction," and it is one which personally I always welcome when it is applied. I think for the most part the judges have acted on that principle, but there was a case of *Re Flint* [1927] 1 Ch. 570, which came before Mr. Justice Astbury, and there I felt that the judge had not acted upon that benevolent construction; it may be because he decided against my argument, but apart from that I do not think I should have liked the decision. What happened there was that the testator left certain property to be divided into shares, and he gave them on a trust for sale. Then he said that his son A was to have a right of pre-emption of certain property before the trustees should sell. Now a right to buy property at the price at which it is to be offered for sale may be a very valuable right, and the testator very obviously wished his son to have this right of buying the property at a price—I think it was fixed by valuation in some way—before the trustees sold. They were to give him an opportunity of buying it; but on the passing of the Law of Property Act, as the land was to be divided into shares, there was of course a statutory trust for sale. The trustees held under the statute and on the statutory trust for sale, with power to postpone, and so on, and the judge held that the statutory trust for sale took the place of the trust for sale given by the will, and that the right of pre-emption could not apply to a statutory trust for sale, and so the son lost this beneficial right which was given to him under the will. Feeling rather uncomfortable about that decision, I asked Sir Benjamin Cherry, who was responsible for a great deal of the drafting of these Acts, whether there was not somewhere in the Act a provision which I thought I had seen in one of the Bills, to the effect that it was not intended to disturb beneficial interests by anything in these Acts, and he told me that there had been a provision of that kind, but somehow or other in the amendments which had been put in in Committee it had been squeezed out and been forgotten, and unfortunately therefore did not appear in the statute. But Mr. Justice Maugham almost wrote one in for himself by saying: "It is right to place a benevolent construction on the various sections, and in case of doubt to avoid the result that rights possessed before the coming into force of the Act are seriously affected or destroyed." If a similar case occurs in the future, anyone who remembers that passage from Mr. Justice Maugham's judgment will be in a stronger position than we were in the case of *Re Flint* before Mr. Justice Astbury, because the case before Mr. Justice Astbury was in 1927, and Mr. Justice Maugham's decision was in 1932.

Another power which is given to trustees for sale is the power to partition the land instead of selling, but that they can only do when the proceeds of sale have become vested absolutely in some persons of full age in undivided shares. Accordingly, that power does not apply while any of the persons entitled to undivided shares are infants or only hold life interests. At the same time, the Act says this: "Where the proceeds of sale have become absolutely vested in persons

of full age in undivided shares (whether or not subject to a derivative trust) the trustees for sale may with the consent of the persons of full age interested in possession in the net rents and profits until sale . . . partition the land." Those words "whether or not subject to a derivative trust" are not very clear at first sight, but they have been construed in this way, that when the persons who are interested in undivided shares are trustees who themselves hold the property on trust, possibly even on trust for sale, they are included in the phrase "persons absolutely entitled and of full age." Those two points were decided in two cases. One was *Re Thomas* [1930] 1 Ch. 194, which came before Mr. Justice Farwell. The land there was vested in trustees in trust as to half for a son absolutely, and as to a quarter each for two daughters for life. The son who was absolutely entitled to half wanted the trustees to partition the property between them rather than selling, but the court held that the trustees could not partition because the proceeds of sale under the trust had not become absolutely vested in persons of full age in undivided shares, two of the persons entitled being only tenants for life; but the court there got over the difficulty by employing s. 57 of the Trustee Act. That is a most useful section, as I daresay you know, which empowers the court to confer on trustees any power to carry out any transaction, if they have not got such a power under their trust, and the court thinks it would be beneficial that that transaction should be carried out. That is a very wide section, and it is very frequently used. I heard one judge say that he was flooded with applications under s. 57, some quite proper and some preposterous. But this particular judge in this case made use of s. 57 of the Trustee Act to enable trustees for sale to partition the land, although under the Act they had not got power to do it, because he came to the conclusion that it was beneficial under that particular settlement.

The other case under this power to partition was the case of *Re Brooker* [1934] Ch. 610; 78 Sol. J. 447, which came before Mr. Justice Eve. There, two brothers, Thomas and Joseph, were entitled to the property in equal shares. They were both dead at the time this case came on, and they were dead on the 1st January, 1926. Thomas had devised his share to trustees to be equally divided between his brothers and sisters. Joseph had devised his share to trustees in trust for sale, the proceeds to be divided among his six children or their issue. The result of that was that on the 1st January, 1926, the land was held in trust for various persons in undivided shares, and it did not fall within one of the cases provided for in Part IV of the First Schedule, and therefore the whole legal estate vested in the Public Trustee upon the statutory trusts. A new trustee had been appointed, and so the new trustee or trustees held the land on a trust for sale, and the beneficiaries were these: one set of trustees who held on trust to divide between the brothers and sisters of Thomas, and as to the other half another set of trustees who held on trust for sale to divide among the children of Joseph. Then the question arose whether the trustees of the whole property could partition, the proceeds of sale having become absolutely vested in persons of full age; and it was held that the section did apply because of the words in brackets, "whether or not subject to a derivative trust." It was held that the two sets of trustees were persons of full age absolutely entitled under the trust, and they were holding it on a derivative trust, and therefore the trustee who had been appointed in place of the Public Trustee had got power to partition.

Now that completes what I am proposing to deal with at the moment on Trust for Sale, and the next subject I come to is the other branch, that is, Settled Land, and it is nearly time, so I will stop there for to-night. (*Applause.*)

Mr. Wyndham Smith, solicitor, of Altrincham, and of Manchester, left estate of the gross value of £35,177, with net personalty £34,114. He left £100 to the Solicitors' Benevolent Association.

Notes of Cases.

House of Lords.

Matthews *v.* Amalgamated Anthracite Collieries, Limited.

Before the Lord Chancellor, Lord Blanesburgh, Lord Atkin, Lord Russell of Killowen and Lord Macmillan. 15th October, 1935.

Mining of Large and Small Coal—Basis of Payment.

This was an appeal by a miner from an order of the Court of Appeal dated 9th June, 1934, which affirmed an order of a Divisional Court which set aside a judgment given in the appellant's favour at Llanelly County Court, and the respondents to the present appeal were the Amalgamated Anthracite Collieries, Limited, by whom the appellant was employed. The questions which arose for determination on this appeal were whether, having regard to the provision of s. 12 of the Coal Mines Regulation Act, 1887, an agreement made between a collier and his employers that he should be paid for his services in getting both large coal and small coal on the weight of the large coal only was valid, and if not whether he was entitled to any and what additional remuneration in respect of the small coal.

The Lord Chancellor, in giving judgment, said in the county court the appellant claimed that the agreement was illegal, and asked for payment on three alternative bases: (1) That the small coal which he won should be paid for at the rate fixed for large coal; (2) that the small coal should be paid for at the price fixed in the price list for through coal; and (3) that the whole of the coal which was won should be paid for at the through coal price. The county court judge came to the conclusion that the right course was the third, and he awarded Matthews the amount which he would have got if the whole of the coal which he had won during the period covered by the claim had been payable at the through price rate. The Divisional Court and the Court of Appeal held that the county court judge was wrong, and that the only proper basis for awarding remuneration to the plaintiff was a *quantum meruit* basis. He (the Lord Chancellor) thought that their lordships would agree that the decision of the Divisional Court and the Court of Appeal was right on that point. There remained the question whether there was any ground for disturbing the award on the basis of a *quantum meruit*. At the trial the plaintiff throughout was insisting that the *quantum meruit* basis was not applicable. No evidence specifically directed to the question of how much was a fair and reasonable price seemed to have been adduced on either side. In all the circumstances it could not be said that the county court judge had the evidence before him which he was entitled to expect in order to enable him to form a fair estimate as to what was due to the plaintiff on a *quantum meruit* basis and not on the contract basis. In those circumstances the case must go back to the county court judge for him to decide what was a reasonable remuneration on a *quantum meruit*. They did not wish to give the county court judge any direction as to the right method of reaching what was really a question of fact, namely, what was a reasonable remuneration.

The other noble and learned lords concurred. The appeal was accordingly dismissed with costs, and the order of the Court of Appeal remitting the case to the county court judge to fix the payment on a *quantum meruit* basis was affirmed.

Counsel: *Sir Stafford Cripps*, K.C., and *Daniel Hopkin*; *Gavin Simonds*, K.C., *Trevor Hunter*, K.C., and *G. P. Thomas*.

Solicitors: *John T. Lewis & Woods*, for *Randell, Saunders and Randell*, Llanelly; *Bell, Brodrick & Gray*, for *Arthur J. Prosser*, Cardiff.

[Reported by S. E. Williams Esq., Barrister-at-Law.]

Court of Appeal.

Danneburg *v.* White Sea Timber Trust Ltd.

Lord Wright, M.R., Romer, L.J., and Eve, J.
15th and 16th October, 1935.

Shipping — Charter-party — New Ice Clause — Construction—Continuous Ice-Breaker Assistance.

Appeal from a decision of Branson, J. (79 Sol. J. 382).

The following new ice-breaking clause was framed for insertion in the Chamber of Shipping Baltic Wood Charter, 1926: "(1) In the event of the port of loading being inaccessible by reason of ice or in case ice sets in after vessel's arrival at port of loading the charterers undertake to arrange for the provision by the port authorities of ice-breaker assistance if required by the captain free of expense to the steamer, the steamer complying with official instructions and rules issued by the authorities concerning ice-breaker assistance . . . (2) Ice-breaker assistance to be rendered free of expense to the steamer within forty-eight hours of receipt by the captain of the port (at loading port) of master's or owner's notification of arrival at the edge of ice, or, when leaving port, forty-eight hours after notification by the master of readiness to leave. (3) Time lost by the vessel in waiting for ice-breaker assistance at the edge of ice and when leaving the loading port in the excess of the time provided for in Clause 2 to count as demurrage and/or detention. (4) Charterers shall not be responsible for any loss of time during passage through the ice and/or any loss or damage caused to the steamer by ice or for any detention on passage through ice." Branson, J., held that "ice-breaker assistance" bore the same meaning as in *Ugleexport Charkow* v. *Owners of s.s. Anastasia* (39 Com. Cas. 238), and that it must be reasonably continuous from the moment the ship entered the ice.

Lord Wright, M.R., dismissing the appeal, said that regard must be had to the decisions on a former ice-clause. The *Anastasia Case* (*supra*) afforded great assistance though the contracts were not identical. Though different in language cl. 1 was clear and unambiguous, embodying an obligation as absolute and peremptory as in the *Anastasia Case*. To "arrange for" did not involve merely asking for the provision of assistance, but securing its effective provision. Clause 2 supported that conclusion. Clause 4 was relied on by the appellants. Read without qualification it implied that if the ice-breaker were provided within the specified time it could afterwards leave the ship in the ice till spring released it. But it must be read subject to what Scrutton, L.J., said in *Gibaud* v. *Great Eastern Railway Co.* [1921] 2 K.B. 426, at p. 435: ". . . if you undertook to do a thing in a certain way . . . with certain conditions protecting it, and have broken the contract by not doing the thing contracted for in the way contracted for . . . you cannot rely on the conditions which were only intended to protect you if you carried out the contract in the way in which you had contracted to do it." This was approved in *Cap Palos* [1921] P. 458. Clause 1 was the dominant and over-riding clause, and cl. 4 merely a provision by way of exception.

Romer, L.J., and Eve, J., agreed.

Counsel: *H. Hallett; C. T. Miller.*

Solicitors: *Pettite, Kennedy, Morgan & Broad; William A. Crump & Son.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Appeals from County Courts.

Gutsell *v.* Reeve.

Lord Wright, M.R., Romer, L.J., and Eve, J.
14th and 15th October, 1935.

Limitation of Actions—Agricultural Labourer—Wages below Statutory Rate—Claim for Balance—Action brought more than Six Years After—Whether Barred—Limitation Act, 1623 (21 Jac. 1, c. 16), s. 3—Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 3—Agricultural Wages (Regulation) Act, 1924 (14 & 15 Geo. 5, c. 37), ss. 1, 7.

Appeal from Hastings County Court.

A farm labourer employed between June, 1925, and Easter, 1927, was, in pursuance of an express arrangement with his employer, paid wages below the statutory rate of wages for farm labourers under the Agricultural Wages (Regulation) Act, 1924. In June, 1935, he brought an action to recover the difference between what he was paid and what he alleged he ought to have been paid. His Honour Judge Austin James gave judgment for the defendant. The plaintiff appealed.

Lord Wright, M.R., dismissing the appeal, said that the question was whether the claim came within s. 3 of the Civil Procedure Act, 1833, so that the limitation was twenty years, or within s. 3 of the Limitation Act, 1623, so that the limitation was six years. It was not necessary to decide whether the claim was technically in debt or *assumpsit*, but it would be assumed it was in debt, since the 1833 Act only applied to such actions. His lordship then referred to ss. 1 and 7 of the Act of 1924. The whole basis of the Act was that there should be an employment and in s. 16 (1) "employment" was defined as "employment under a contract of service or apprenticeship." The question whether a claim under a statute was within the 1833 Act was discussed in *The Cork & Bandon Railway Co.* v. *Goode*, 13 C.B. 826, but that decision did not cover the present case. Here there was a contract of employment containing many terms besides wages. The plaintiff sought to say that his right to wages arose from the Act of 1924 and nothing else, but that construction was unwarranted. The effect of s. 7 (10) was to provide that where you had a contract of employment, one item under the terms was to be reconstructed by striking out a rate of wages which was lower than it should be and inserting the proper rate in accordance with the Act. The claim was on the contract amended by the statute. His lordship then referred to *Salford Corporation* v. *Lancashire County Council*, 25 Q.B.D. 384; *In re Cornwall Minerals Railway Co.* [1897] 2 Ch. 74; *Thomson* v. *Lord Clanmorris* [1900] 1 Ch. 718; and *Aylott* v. *West Ham Corporation* [1927] 1 Ch. 30. This action was not brought upon a specialty within the Act of 1833.

Romer, L.J. and Eve, J., agreed.

Counsel: *Gorst; Horton-Smith.*

Solicitors: *Harold Eves; Dixons, Ward & Co.*, agents for *F. W. Morgan*, of Hastings.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

De Normanville *v.* Hereford Times Limited.

Macnaghten, J. 8th and 11th October, 1935.

Defamation—Newspaper Report of Public Meeting—Alteration by Editor of Actual Words used—Absence of Malice—Whether Fair and Accurate Report—Law of Libel Amendment Act, 1888 (51 & 52 Vict., c. 64), s. 4.

The plaintiff was a member of the Hereford City Council. In November, 1934, there was a poll for the election of members of the council. Certain candidates for election were nominated by a citizens' party, of which the plaintiff was one of the leaders. A short while before the election, two citizens' party candidates issued a fly-sheet containing certain addresses previously delivered by them. On the front of the sheet was a notice of a meeting at which the plaintiff was to speak. On the back was, *inter alia*, wording to the effect that a Mrs. L. and a Mr. B., two Conservative candidates, had opposed a grant by the council of free milk to the children of unemployed and low paid workers. Just before the election,

the defendant newspaper published a letter from Mrs. L. and Mr. B. denying the allegation in the fly-sheet. Mrs. L. was among those elected. After the declaration of the poll, a public meeting was held at which the chairman was afterwards reported by the defendant newspaper to have said, in referring to the allegation in the fly-sheet: "I want to refer publicly to Father de Normanville, who had the audacity to give backing to that statement." In fact, the actual words used by the plaintiff had been "who had the audacity to sign his name to a statement which was a lie." This alteration was made by the editor of the defendant newspaper because he thought that the chairman was referring to the fly-sheet, and that his statement was therefore not in accordance with the facts. Further on in the account of the chairman's words, however, there appeared the sentence "it is a public disgrace . . . that a man . . . should have the audacity to support a statement which is a lie." The plaintiff accordingly brought this action for libel against the defendants, who pleaded s. 4 of the Law of Libel Amendment Act, 1888, saying that the words complained of formed part of a fair and accurate report of a public meeting lawfully held.

MACNAGHTEN, J., in a reserved judgment, said that there was no evidence that the editor, in revising the report of the meeting, was influenced in any way by motives which could come within the definition of malice so as to deprive the defendants of their protection under the Act of 1888. The most serious charge against the defendants had been the alteration of the chairman's words. To secure protection, a report must be a fair and accurate one of the proceedings. It had to be conceded that, so far as literal accuracy was concerned, the editor's alteration of the words which were actually used prevented the report from being an accurate one. But it had been said that the words of the publication, although not literally true, were substantially accurate, and that the report did in fact set out fairly and accurately the charge made by the chairman against the plaintiff. In substance, the plaintiff had been charged with making a false statement knowing it to be untrue. The altered version of the chairman's speech in the defendants' newspaper had made exactly the same charge. If he (his lordship) had thought that the alteration had been made in order to prejudice the plaintiff, he would have held that the defendants had lost the privilege given by the Act of 1888, as it might then have been argued that they had acted maliciously. But that was in his opinion not the case. It had been argued that the report did in fact prejudice the plaintiff unintentionally, because, had it contained the words actually used, it would have established clearly that the plaintiff was being charged with what was, under the Illegal Practices Act, 1911, coupled with the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, a criminal offence, so that he could have maintained an action for slander against the speaker. That argument, however, did not appeal to him (his lordship). The report in question came within the protection of the Act and the action accordingly failed.

COUNSEL: *St. John Micklethwait*, K.C., and *A. W. Cockburn*, for the plaintiff; *N. Macaskie*, K.C., and *A. F. Engelbach*, for the defendants.

SOLICITORS: *Charles Stuart Hallinan*; *Stanley & Co.*, agents for *Thomas Alfred Matthews*, Hereford.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

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Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Enforcement of Judgments.

Sir,—Discussion with fellow solicitors has long convinced me our present system of enforcing judgments is antiquated and therefore ineffective.

In many cases after much expense sheriff or county court bailiff ultimately reports inability to satisfy the judgment, and very often the solicitor is blamed.

I suggest the whole sheriff system is an anachronism and urgently calls for modernisation on lines more fitted to deal with present-day conditions.

Destructive criticism is useless, and I would invite the views of the profession on the following constructive suggestions:—

(1) Offices of sheriff and county court bailiff to be amalgamated, thus putting at the disposal of the sheriff the vast amount of local knowledge in the hands of the county court officials. County distinctions to be abolished.

(2) All unsatisfied judgments, whether high court or county court, to be registered (perhaps after preliminary notification to the debtor).

(3) Writs of *Fi Fa*, *Ne Exeat Regno* and other interesting but archaic formalities to be abolished.

(4) The signing of judgment *ipso facto* to constitute an order to the sheriff's department to take all necessary steps to enforce the judgment without further delay.

(5) The form of order on signing judgment to be elaborated so as to constitute:—

(*a*) an order on the defendant not to leave the Kingdom until the judgment has been satisfied;

(*b*) an order and authority to all persons whom it may concern, e.g., bankers, safe deposits, accountants, income tax officials and others, to assist the sheriff by all means in their power to trace the defendant's assets;

(*c*) an embargo on the whole of the defendant's assets in whosesoever hands, ordering the holder to place the same at the disposal of the sheriff pending further order.

(6) The Foreign Office to be automatically advised of registered judgments, so that the defendant's passport, if any, may be withdrawn and orders issued to the embarkation officers to prevent the defendant leaving the country.

(7) The sheriff to be entitled to the co-operation and assistance of the police in tracing the defendant and his assets.

(8) The assets of wives and (subject possibly to certain qualifications) children residing with their parents to be liable to execution, the onus being placed upon the wife or child to prove that the goods are their own property and not merely made over to them by the debtor for the purpose of evading execution.

The administration of civil justice is at present carried on at a profit. Is it too much to ask that the courts, once judgment has been given, should assume responsibility to the successful plaintiff for the enforcement of his judgment? The whole onus of enforcing the judgment at present rests with the plaintiff's solicitors, grave delay necessarily ensues, and whilst the honest but unfortunate debtor is an easy prey to the sheriff and the bailiff, the dishonest debtor, with no fixed place of abode or business, coupled with the use probably of aliases and other subterfuges, is able, in a large number of cases, to evade the clutches of the law.

One further point. I would suggest that the Business Names Act is largely a dead letter owing to the absence of any adequate machinery for enforcement. As at present administered, it is a mere device to extract periodical fees out of honest traders, whilst dishonest traders systematically disregard the provisions of the Act. The police, inspectors of taxes and other government officials should be charged with the duty of bringing to the attention of the registrar cases of failure to comply with the Act.

As a preliminary step it would be illuminating if a return were published of the numbers of cases over, say, the past five years, where the sheriff and the county court officials have returned *nulla bona*, and the total amount of the judgments involved. I would suggest also that the Lord Chancellor take steps to invite the views of the profession on the present situation.

Bath. GEO. E. HUGHES.
19th October.

Obituary.

LORD CARSON.

Lord Carson of Duncairn, a Lord of Appeal in Ordinary until 1929, died at Minster on Tuesday, 22nd October, at the age of eighty-one. Appointed Solicitor-General for Ireland in 1892, he was called to the English Bar by the Middle Temple in 1893, and took silk in 1894. He became Solicitor-General for England in 1900, Attorney-General in 1915, and a Lord of Appeal in Ordinary in 1921. He resigned in 1929.

MR. E. F. LEVER.

Mr. Ernest Frederick Lever, M.A., LL.M. (Cantab.), Barrister-at-Law, of Essex-court, Temple, died in a nursing home in London, on Thursday, 17th October. Mr. Lever was called to the Bar by the Inner Temple in 1888.

MR. J. WATKINSON.

Mr. Joshua Watkinson, solicitor, of York, died on Saturday, 19th October, at the age of seventy-two. Mr. Watkinson, who was a son of the late Alderman Thomas Samuel Watkinson, a former Lord Mayor of York, served his articles with Mr. William Walker, and was admitted a solicitor in 1887. He afterwards took over Mr. Walker's practice.

MR. T. J. TEE.

Mr. Thomas Joseph Tee, solicitor, of Old Jewry, E.C., Woodford and Buckhurst Hill, died at Woodford Green, on Monday, 21st October, at the age of eighty-five. Mr. Tee, who was admitted a solicitor in 1874, was senior partner in the firm of Messrs. Ashley, Tee & Sons, of Old Jewry, E.C.

MR. F. WHITFIELD.

Mr. Frank Whitfield, solicitor, head of the firm of Messrs. Clinton & Co., of Chancery-lane, died at East Sheen, on Friday, 18th October. He was admitted a solicitor in 1902.

Rules and Orders.

THE COUNTY COURT FUNDS RULES, 1935. DATED SEPTEMBER 28, 1935.

1. These Rules may be cited as the County Court Funds Rules, 1935, and shall come into operation on the 30th day of September, 1935, and shall be read and construed with the County Court Funds Rules, 1934.*

A Rule referred to by number in these Rules means the Rule so numbered in the County Court Funds Rules, 1934.

The Appendix referred to in these Rules means the Appendix to the County Court Funds Rules, 1934.

A Form referred to by number in these Rules means the Form so numbered in the Appendix to the County Court Funds Rules, 1934.

The County Court Funds Rules, 1934, shall have effect as amended by these Rules.

2. In paragraph (3) of Rule 11 the words " or crossed postal order " shall be inserted after the expression " money order."

3. In paragraph (2) of Rule 15 the words " or Form 9A " shall be inserted after the expression " Form 9 " and the words " as may be applicable " shall be inserted after the word " Appendix."

4. Rule 21 shall be amended as follows :—

Paragraph (2) shall be omitted and the following paragraph shall be substituted therefor :—

" (2) Such interest shall accrue, in the case of a Fund paid into Court, a dividend credited, or stock sold under Rule 34, from the beginning of the calendar month next succeeding that in which the Fund is paid into Court, the dividend credited, or the warrant for the proceeds of the sale of the stock received by the Accountant-General, and, in the case of a Fund or a portion thereof transferred from Investment account, from the beginning of the calendar month in which the transfer takes place."

In paragraph (5) the words " at the close of each year ending on the 31st March " shall be omitted and the words " on the 31st December in each year " shall be substituted therefor.

Paragraph (6) shall be omitted and the following paragraph shall be substituted therefor :—

" (6) The ledger entry crediting the interest accrued to the preceding 31st December shall be so dated and shall be made by the Registrar on or before the 14th January in each year."

5. In paragraph (3) of Rule 22 the words " 30th June and 31st December " shall be substituted for the words " 31st March and 30th September."

In paragraph (4) the words " 30th June or 31st December " shall be substituted for the words " 31st March or 30th September " and the words " 14th July or 14th January " shall be substituted for the words " 7th April or 7th October."

6. In the Appendix there shall be inserted the following new form which shall stand as Form 9A :—

F.R. 9A.—*Notice with Balance of Funds transmitted by Registrar to Accountant-General.*

[*To be forwarded in* DUPLICATE.]

Funds Rules 15 & 24.

FOR H.Q. USE ONLY.
Checked and posted by
.....
Cheque despatched to P.M.G. by
.....

COUNTY COURT at .....

TO THE ACCOUNTANT-GENERAL OF THE SUPREME COURT,
COUNTY COURTS BRANCH,
LORD CHANCELLOR'S DEPARTMENT,
HOUSE OF LORDS, LONDON, S.W.1.

The Registrar begs to transmit herewith a Schedule of the Funds paid into Court since the (1) day of

* S.R. & O. 1934 (No. 1315) I, p. 272.

19 , together with a cheque for £ : : , being the amount not required for official payments.

	£	s.	d.
1. Total Funds received as per Schedule			
2. Cash in hand			
3. Cash at Bank			
4. Total of Funds and other large amounts required for payment during next week			

(1) Date of last remittance.

SCHEDULE.

Number and title of Action or Matter.	Governing Statute.	Date of payment.	Amount of Fund.		
		19 .			
		TOTAL ..			

Date.....19 . .....Registrar.

7. In Form 10 the cash statement following the words "Funds out of Court" shall be omitted and the following statement shall be substituted therefor :—

	£	s.	d.
Cash in hand			
Cash at Bank			
Total			
Amount of Funds to be paid out immediately under orders			
Amount of other large payments, if any, to be made during the next 7 days			

8. In Form 12 the words "Warrant received from Controller on ....." shall be inserted after the words "Checked and posted by....."

Dated the 28th day of September, 1935.

Hailsham, C.

We certify that these Rules are made with the concurrence of the Lords Commissioners of His Majesty's Treasury.

James Blindell,
Walter J. Womersley.

THE LAW REFORM (MARRIED WOMEN AND TORTFEASORS) ACT, 1935, DATE OF COMMENCEMENT ORDER, 1935. DATED OCTOBER 16, 1935.

I, Douglas McGarel Viscount Hailsham, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by section 7 of the Law Reform (Married Women and Tortfeasors) Act, 1935,* do hereby order and appoint as follows :—

1. Part II of the said Act (which relates to proceedings against and contribution between tortfeasors) shall come into operation on the first day of November, 1935.

2. This Order may be cited as the Law Reform (Married Women and Tortfeasors) Act, 1935, Date of Commencement Order, 1935.

Dated this 16th day of October, 1935.

Hailsham, C.

* 25 & 26 Geo. 5, c. 30.

Societies.

The Hardwicke Society.

A meeting of the Society was held on Friday, 18th October, at 8.15 p.m., in the Middle Temple Common Room, the President, Mr. T. H. Mayers, in the chair. Mr. James A. Petrie (Hon. Treasurer) moved : "That this house approves the application of sanctions against an aggressor State." Mr. Lewis Sturge opposed. There also spoke Mr. W. Horsfall-Carter (Guest), Mr. A. Newman Hall (Immediate Past President), Mr. W. L. Fearnehough, Sir Fiennes Barrett-Lennard, Mr. J. Amphlitt, Mr. Krusin, and Mr. Brian Goddard (Guest). The Hon. Mover having replied, the house divided, and the motion was carried by ten votes.

United Law Society.

A meeting of the United Law Society was held in the Middle Temple Common Room at 7.45 p.m. on the 21st October. Mr. O. T. Hill proposed the motion : "That *Robinson* v. *Graves* [1935] 1 K.B. 579, was wrongly decided." Mr. A. Morgan opposed. Miss Colwill and Messrs. Burke, Everett, Kent, Menzies, Owens, Vine-Hall and Wood-Smith also spoke. After Mr. Hill had replied, the motion was put to the House and carried by two votes.

Law Students' Debating Society.

At a meeting of the Society, held at The Law Society's Court Room, on Tuesday, 15th October (Chairman, Miss U. A. Hastie), the subject for debate was : "That this house considers that no action should lie for breach of promise of marriage." Mr. J. R. Campbell Carter opened in the affirmative and Mr. B. W. Main opened in the negative. The following members also spoke : Messrs. C. O'Connor, J. E. Terry, R. W. Jackling, H. J. Parton, E. V. E. White, R. Langley Mitchell, S. C. Baron, G. Roberts, J. G. McAndrew, R. Graham, Q. Hurst, W. M. Pleadwell, P. W. Iliff, and G. G. Jeudwine. The opener having replied, the motion was lost by six votes. There were twenty members and six visitors present.

At a meeting of the Society held at The Law Society's Court Room on Tuesday, 22nd October, (Chairman, Mr. E. V. E. White), the subject for debate was : "That the case of *Rex* v. *Sir R. F. Graham-Campbell* [1935] 1 K.B. 594, was wrongly decided." Mr. A. N. Buckmaster opened in the affirmative. Mr. J. E. Terry opened in the negative. Mr. C. J. de S. Root seconded in the negative. The following members also spoke : Messrs. W. M. Pleadwell, G. Roberts, R. L. Landman, A. H. King-Robinson, A. T. Wilson, G. M. Parbury, E. C. Durham, J. R. Campbell Carter, J. P. R. Oakes, S. A. Baron, P. H. North-Lewis and A. M. Greenwood. The opener having replied and the Chairman having summed up, the motion was carried by four votes. There were fifteen members and four visitors present.

The Solicitors' Managing Clerks' Association.

A meeting will be held on Friday, 1st November, in the Inner Temple Hall, by kind permission of the Benchers, when Mr. Harold Christie, K.C., will deliver a lecture on "Some points arising on the liquidation of a Company." The chair will be taken at seven o'clock precisely by The Right Hon. Lord Blanesburgh, G.B.E.

The Union Society of London.

(CENTENARY YEAR.)

A meeting of the Society was held at the Middle Temple Common Room on Wednesday, the 23rd October, at 8.15 p.m., the Vice-President (Mr. S. R. Lewis) being in the chair. Mr. Hackforth Jones proposed the motion : "That this House would deplore the use of sanctions other than economic sanctions as a means of ensuring peace." Mr. Bassett opposed, and Mr. Orme, Mr. Brundrit, Mr. Murison, Mr. Oakes, Mr. Fearnehough, Mr. Ingram, Mr. Hurle Hobbs, Major Buller, Mr. Eric Moses, Mr. Wingate and Capt. Ellershaw also spoke. Mr. Hackforth Jones having replied, upon division the motion was lost by two votes.

Legal Notes and News.

Honours and Appointments.

The Board of Trade have appointed Mr. HAROLD STONES HAWORTH to be Official Receiver for the Bankruptcy District of the County Courts holden at Blackburn and Clitheroe and Burnley, with effect from the 1st November, 1935, in the place of Mr. John William Carter, deceased. Mr. Haworth who was admitted a solicitor in 1902, is a partner in the firm of Messrs. E. & B. Haworth & Nuttall, of Blackburn.

At the request of Northumberland coal-owners' and miners' associations, which were unable to agree on the appointment of a chairman of the Board of Arbitrators recently set up, the Lord Chief Justice has appointed Sir FRANCIS KYFFIN TAYLOR, K.C., Presiding Judge of Liverpool Court of Passage.

The Lord Chancellor has appointed Mr. H. L. H. HILL to be one of the Commissioners of the London Passenger Transport Arbitration Tribunal.

Professional Announcements.

(2s. per line.)

SOLICITORS & GENERAL MORTGAGE & ESTATE AGENTS ASSOCIATION.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office : 12, Craven Park, London, N.W.10.

Notes.

The Barony conferred on Lord Justice Roche on his appointment as a Lord of Appeal in Ordinary was gazetted on Friday, 18th October, by the style and title of Baron Roche of Chadlington in the County of Oxford.

The Institute of Chartered Accountants in England and Wales held a dinner in Guildhall last Monday which was attended by the Lord Mayor and Sheriffs. Mr. A. E. Cutforth, President, was in the chair, and the gathering numbered over 500.

Alderman E. L. Wallis, solicitor, of Hereford, who first entered the city council in 1883, is to be presented with a framed photograph to hang in the council chamber. Admitted a solicitor in 1877, he is a freeman of the city and coroner for South Herefordshire.

A sessional evening meeting of the members of The Auctioneers' and Estate Agents' Institute will be held at 29, Lincoln's Inn-fields, W.C.2, on Thursday, 31st October, 1935, at 7 p.m., when Mr. J. Geo. Head, J.P. (Past-President), will deliver a paper entitled "Rent—Its Nature and the Causes of its Variation."

Wills and Bequests.

Mr. Roger Muir Oddie, solicitor, of Blackburn, left £11,191, with net personalty £7,887.

Mr. Charles George Nantes, solicitor, of Bridport, left £21,902, with net personalty £21,062.

Mr. John Aeron Thomas, J.P., solicitor, of West Cross, Swansea, left £114,732, with net personalty £80,242.

NOTICE TO CONTRIBUTORS.

The Editor will be pleased to consider for publication contributions and correspondence from any professional source upon matters of legal interest.

All contributions (including correspondence) should be typewritten and on one side of the paper only, and must be accompanied by the name and address of the contributor.

The Editor is unable to accept any responsibility for the safe custody of contributions submitted to him, and copies should therefore be retained. The Editor will, however, endeavour in special circumstances to return unsuitable contributions within a reasonable period, if a request to this effect and a stamped addressed envelope are enclosed with the manuscript.

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Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Non-Witness.	GROUP I. MR. JUSTICE BENNETT. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Oct. 28	Blaker	Andrews	Hicks Beach	*Jones
,, 29	More	Jones	Blaker	*Hicks Beach
,, 30	Hicks Beach	Ritchie	Jones	*Blaker
,, 31	Andrews	Blaker	Hicks Beach	*Jones
Nov. 1	Jones	More	Blaker	Hicks Beach
,, 2	Ritchie	Hicks Beach	Jones	Blaker
	GROUP I. MR. JUSTICE CROSSMAN. Witness. Part II.	MR. JUSTICE CLAUSON. Witness. Part II.	GROUP II. MR. JUSTICE LUXMOORE. Witness. Part I.	MR. JUSTICE FARWELL. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Oct. 28	*Blaker	Andrews	*More	Ritchie
,, 29	Jones	*More	*Ritchie	Andrews
,, 30	*Hicks Beach	Ritchie	*Andrews	More
,, 31	Blaker	*Andrews	More	Ritchie
Nov. 1	*Jones	More	*Ritchie	Andrews
,, 2	Hicks Beach	Ritchie	Andrews	More

* The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 7th November, 1935.

	Div. Months.	Middle Price 23 Oct. 1935.	Flat Interest Yield.	‡Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	113	3 10 10	3 2 11
Consols 2½%	JAJO	83½	2 19 11	—
War Loan 3½% 1952 or after	JD	105	3 6 8	3 2 4
Funding 4% Loan 1960-90	MN	114½	3 9 10	3 3 1
Funding 3% Loan 1959-69	AO	101	2 19 5	2 18 10
Victory 4% Loan Av. life 23 years	MS	113	3 10 10	3 3 10
Conversion 5% Loan 1944-64	MN	117	4 5 6	2 12 5
Conversion 4½% Loan 1940-44	JJ	110	4 1 10	2 10 1
Conversion 3½% Loan 1961 or after	AO	104½	3 7 0	3 4 9
Conversion 3% Loan 1948-53	MS	103	2 18 3	2 14 1
Conversion 2½% Loan 1944-49	AO	99½	2 10 3	2 10 11
Local Loans 3% Stock 1912 or after	JAJO	93	3 4 6	—
Bank Stock	AO	356	3 7 5	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	85½	3 4 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	93	3 4 6	—
India 4½% 1950-55	MN	109	4 2 7	3 14 2
India 3½% 1931 or after	JAJO	94	3 14 6	—
India 3% 1948 or after	JAJO	81½	3 13 7	—
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3 16 3	3 9 4
Sudan 4% 1974 Red. in part after 1950	MN	111	3 12 1	3 1 6
Tanganyika 4% Guaranteed 1951-71	FA	112	3 11 5	2 19 11
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109	4 2 7	2 17 0
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	106	3 15 6	3 11 6
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	101	3 14 3	3 13 0
Canada 4% 1953-58	MS	106	3 15 6	3 10 11
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0
*New South Wales 3½% 1930-50	JJ	99	3 10 8	3 11 9
*New Zealand 3% 1945	AO	100	3 0 0	3 0 0
Nigeria 4% 1963	AO	111	3 12 1	3 7 9
*Queensland 3½% 1950-70	JJ	100	3 10 0	3 10 0
South Africa 3½% 1953-73	JD	104	3 7 4	3 4 1
*Victoria 3½% 1929-49	AO	99	3 10 8	3 11 10
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	95	3 3 2	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	105	3 6 8	3 2 4
Leeds 3% 1927 or after	JJ	91	3 5 11	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	103	3 8 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	79	3 3 3	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	92	3 5 3	—
Manchester 3% 1941 or after	FA	90½	3 6 4	—
Metropolitan Consd. 2½% 1920-49	MJSD	97½	2 11 3	2 14 4
Metropolitan Water Board 3% "A" 1963-2003	AO	96	3 2 6	3 2 10
Do. do. 3% "B" 1934-2003	MS	95	3 3 2	3 3 8
Do. do. 3% "E" 1953-73	JJ	98½	3 0 11	3 1 4
Middlesex County Council 4% 1952-72	MN	111½	3 11 9	3 2 4
† Do. do. 4½% 1950-70	MN	114	3 18 11	3 6 0
Nottingham 3% Irredeemable	MN	90	3 6 8	—
Sheffield Corp. 3½% 1968	JJ	103	3 8 0	3 7 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	111	3 12 1	—
Gt. Western Rly. 4½% Debenture	JJ	119½	3 15 4	—
Gt. Western Rly. 5% Debenture	JJ	132½	3 15 6	—
Gt. Western Rly. 5% Rent Charge	FA	129½	3 17 3	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	126½	3 19 1	—
Gt. Western Rly. 5% Preference	MA	111½	4 9 8	—
Southern Rly. 4% Debenture	JJ	110	3 12 9	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	110½	3 12 5	3 8 0
Southern Rly. 5% Guaranteed	MA	125½	3 19 8	—
Southern Rly. 5% Preference	MA	112½	4 8 11	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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